
DEED OF SETTLEMENT
(Contemporary Aspects of the Wai 692 – Napier
Hospital and Health Services Claim)

3 October 2008

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HE MAIMAI AROHA

PREAMBLE

1.	BACKGROUND	4
2.	ACKNOWLEDGEMENTS	14
3.	RESOLUTION OF THE CONTEMPORARY ASPECTS OF THE WAI 692 CLAIM	15
4.	THE SETTLEMENT AND ITS IMPLEMENTATION	16
5.	WAI 692 ENDOWMENT FUND	26
6.	TAX INDEMNITY	33
7.	MISCELLANEOUS MATTERS	36
8.	DEFINITIONS AND INTERPRETATION	40
	SCHEDULE	56
1.	Some Individuals Who Supported the Wai 692 Claim	
2.	Terms of Transfer of Settlement Properties	
3.	Indicative Terms of Rongoa Contract	
4.	Dispute Resolution Process	
5.	Memorandum of Commitment	
6.	Map of Rohe of Ahuriri	

APPENDIX

Final Statement of Claim for Wai 692

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THIS DEED IS MADE

BETWEEN

HER MAJESTY THE QUEEN in right of
New Zealand

AND

THE HAWKE'S BAY DISTRICT HEALTH
BOARD

AND

THE WAI 692 CLAIMANTS

AND

AHURIRI DISTRICT HEALTH

AND

THE TRUSTEES OF THE WAI 692
ENDOWMENT FUND TRUST

As Parties

AND

TE TAIWHENUA O TE WHANGANUI A
OROTU INCORPORATED

As Supporting the Settlement

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He Maimai Aroha

E whae e Hana, taku tiki poumanu, ko te huanga anake, taku koko tangiwai, ka motu i te taringa, taku rake tihau-ora, nau i tamoe. Moe mai, e whae, i runga o Takitimu, utaina atu koe ki te waka rangaranga.

E whae e Hana, e ngaro noa ra te rau o Mataruahou, i tokotokona ai e koe ki mamao. Kia tika, e whae, i te harakeke tapu, i Kaburanaki, i runga o Mataruahou ki to tupuna ra; kia tungia koe te whare o Uenuku. E whae, ka horahia iho te takapau kura ki te putahi ki a Rehua na i.

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PREAMBLE

1. The settlement under this Deed of the contemporary aspects of the Wai 692 claim has come about largely through the vision of Pirika Tom Hemopo and the dedication and vision of the late Hana Lyola Cotter.
2. In this work Mrs Cotter was widely supported by other Wai 692 claimants and their supporters, the community and her family.
3. Through their collective efforts, attention was drawn to a range of issues affecting the health status of the Māori community in Napier. The Crown acknowledges, with appreciation, the value of their work.
4. The Crown believes that the settlement redress under this Deed will make a material contribution to the future health and well being of the Māori community in Napier. This will be an enduring and fitting tribute to the late Mrs Cotter.

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1. BACKGROUND

Wai 692 – Napier Hospital and Health Services Claim

5. As a result of changes to the delivery of health services in Hawke's Bay, a decision to close Napier Hospital was made in December 1997. Hoani Hohepa, on behalf of the Ahuriri hapu mana whenua, passed the mana (mandate) on the issue to Pirika Tom Hemopo to make a claim for the closure of the hospital, and related health services, in Napier.
6. In January 1998, the late Hana Lyola Cotter, Takuta Hohepa Mei Emery and Pirika Tom Hemopo submitted a claim to the Waitangi Tribunal on behalf of themselves, Te Taiwhenua o Te Whanganui a Orotu Incorporated and the peoples within the Ngati Kahungunu tribal rohe of Ahuriri, who include Ahuriri hapu mana whenua.
7. The claim, including three later amendments to the claim, was allocated the reference number Wai 692 by the Waitangi Tribunal.
8. The final statement of claim for the Wai 692 claim is included as an appendix to this Deed.
9. Te Taiwhenua o Te Whanganui a Orotu Incorporated and Ngati Kahungunu Iwi Incorporated gave particular support to the prosecution of the Wai 692 claim. The Wai 692 claim was also supported by the Napier Public Health Action Group Incorporated and the wider Napier community.
10. Some individuals who supported the claim are listed in Part 1 of the Schedule to this Deed.

Nature of the Wai 692 Claim

11. The Wai 692 claim raised matters in relation to Napier Hospital and health services in Napier comprising:

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11.1 historical aspects relating to matters that occurred before 21 September 1992, including the alleged failures of the Crown to:

11.1.1 meet an asserted obligation to provide for the health and well-being of Māori; and

11.1.2 honour a historical promise, said to have been given by Donald McLean as part of the negotiations to purchase the Ahuriri Block in 1851, to provide health and hospital services to Māori of Ahuriri from the site on the hill where Napier Hospital was located subsequently; and

11.2 contemporary aspects relating to matters that occurred on or after 21 September 1992, including the decision-making that led eventually to the regionalisation of Hawke's Bay hospital services in Hastings and the subsequent closure of Napier Hospital.

Waitangi Tribunal Report

12. The Waitangi Tribunal inquired into the Wai 692 claim and issued its report on 28 August 2001. The Tribunal looked at a number of issues that arose during the 1980s and 1990s in its report. These issues included consultation with Ahuriri Māori on decisions to regionalise hospital services in Hastings and to close Napier Hospital. The Tribunal found that the majority of the Wai 692 claimants' concerns were well founded and recommended a community health centre be established, governed by trustees on behalf of Ahuriri Māori and bicultural in character, serving the special needs of Ahuriri Māori but open to all. It suggested that the centre should function as an integrated care organisation providing a variety of primary, public, promotional, educational and rongoa Māori services.

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Wai 692 claimants' Statement of Position

13. The Wai 692 claimants prepared a Statement of Position setting out their proposal for resolution of the Wai 692 claim, based broadly on the recommendations of the Waitangi Tribunal. The Statement of Position was presented to the Crown in February 2002 and was the subject of consultation with the Napier community in May 2002. The Statement of Position was supported by the Napier community.
14. In their Statement of Position the Wai 692 claimants expressed support for the substance of the Waitangi Tribunal's recommendations and, in particular, the establishment of a Treaty-based health relationship between Ahuriri Māori and the Crown, including the DHB.

Crown response

15. After considering a briefing on the Waitangi Tribunal's report and the Wai 692 claimants' Statement of Position, on 25 June 2003 the Cabinet Policy Committee agreed that:
 - 15.1 the report of the Waitangi Tribunal be set aside because:
 - 15.1.1 assumptions about Māori health and the causes of disparities, such as contemporary breaches, were based on findings about the existence of health disparities in national population surveys rather than on specific data pertaining to Ahuriri Māori;
 - 15.1.2 resolving the Wai 692 claim under a Treaty of Waitangi settlement process would have the potential to prejudice the broader regional Mohaka ki Ahuriri Claim Wai 400;
 - 15.1.3 the introduction of a new definition for the contemporary claim period would differ from the

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Government policy of post-20 September 1992 for contemporary claims; and

15.1.4 the interpretation of the Treaty of Waitangi principles would be extended; and

15.2 historical aspects of the Wai 692 claim were to be addressed by the Office of Treaty Settlements under the current historical Treaty settlement framework.

16. The Cabinet Policy Committee did acknowledge that the Wai 692 claimants had a number of concerns and officials were authorised to work with the Wai 692 claimants to address the following concerns and issues:

16.1 health inequalities;

16.2 limited Māori provider and Māori workforce development;

16.3 non-inclusion of Māori in decision-making processes of Hawke's Bay Crown health agencies;

16.4 lack of mainstream responsiveness to Māori; and

16.5 the perception that the Crown failed to appropriately consult Māori over the closure of the Napier Hospital and transfer of regional health services to neighbouring Hastings.

Authority to commence, and parameters of, negotiations

17. Officials from the Ministry of Health were authorised to enter into good faith negotiations with the Wai 692 claimants to try and achieve agreement and resolution of the contemporary aspects of the Wai 692 claim, within the following parameters:

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- 17.1 the focus of any negotiated settlement was to be upon a practical resolution of the claim within existing health policy and legislative frameworks;
- 17.2 while officials might refer to the findings and recommendations of the Waitangi Tribunal to assist in negotiations, there was to be no formal acknowledgement or acceptance of any liability arising under the Treaty of Waitangi;
- 17.3 officials were to take account of the Wai 692 claimants' Statement of Position; and
- 17.4 officials were to consult with and include in negotiations, as appropriate, representatives of the DHB.
18. On 30 June 2003, Cabinet endorsed the decisions of the Cabinet Policy Committee referred to in clauses 15 and 16.

Terms of Negotiation

19. On 3 November 2004, Terms of Negotiation were agreed and executed by the Crown and the mandated negotiators for the Wai 692 claimants (Hana Lyola Cotter (until her passing away on 10 December 2006), Pirika Tom Hemopo and Desma Kemp Ratima (who, from 14 December 2003 has acted as the representative of Takuta Hohepa Mei Emery)). After 10 December 2006, the late Mrs Cotter's daughter, Donna Rose Gudgeon, has acted as her representative.
20. By the Terms of Negotiation the Crown recognised the mandate of the mandated negotiators to negotiate on behalf of the Wai 692 claimants.
21. The mandated negotiators were supported in writing by Te Taiwhenua o Te Whanganui o Orotu Incorporated and Ngati Kahungunu Iwi Incorporated who jointly appointed Bevan Taylor as their representative.

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22. The mandated negotiators have also been supported by others appointed by the mandated negotiators from time to time, including Matthew Matuakore Bennett, Audrey Robin, Marjorie Te Maari Joe, Bevan Taylor, Robin Gwynn, Barry Wilson, Ranui Toatoa, Roderick Nigel Kerry Hadfield, Papara Caroline Carroll, Joinella Maihi-Carroll and other individuals appointed from time to time. The mandated negotiators, and the individuals appointed by them from time to time, are collectively known as the “Wai 692 Claims Committee”.

Crown recognition of claimants’ concerns

23. The Crown shares the Wai 692 claimants’ concerns about health inequalities, provider and workforce development and lack of mainstream responsiveness to Māori. It greatly regrets that the further concerns of the Wai 692 claimants over inclusion of Māori in decision-making processes of Hawke’s Bay Crown health agencies, and consultation by the Crown over the closure of Napier Hospital, have compounded the sense of grievance felt by the Wai 692 claimants prior to this Deed.
24. The Crown considers that health sector reforms since 1999, various health strategies and other measures, and current Māori health policy, have gone some way towards addressing some of the issues arising from contemporary aspects of the Wai 692 claim.

Health sector reforms

25. Part 3 of the New Zealand Public Health and Disability Act 2000 (the “Act”), in order to recognise and respect the principles of the Treaty of Waitangi, and with a view to improving health outcomes for Māori, provides mechanisms to enable Māori to:

- 25.1 contribute to decision-making on health and disability services;
and

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- 25.2 participate in the delivery of health and disability services (section 4).
26. The Act provides that every DHB has an objective of reducing health disparities by improving health outcomes for Māori and other population groups (section 22(1)(e)).
27. DHBs have functions under the Act to:
- 27.1 establish and maintain processes for Māori to participate in, and contribute to, strategies for Māori health improvement;
 - 27.2 continue to foster the development of Māori capacity for participating in the health and disability sector and for providing for the needs of Māori; and
 - 27.3 provide relevant information to Māori for the purposes of these functions (section 23(1)(d)-(f)).
28. The Act also provides for Māori representation on the boards of DHBs (section 29(4)).

Health strategies and other measures

29. A number of health strategies have since the enactment of the Act focussed on reducing health disparities between Māori and non-Māori, and facilitating Māori participation in the provision of health services. These have included:
- 29.1 the New Zealand Health Strategy, He Korowai Oranga, Whakatataka; and
 - 29.2 Whakatataka Tuarua, the Primary Healthcare Strategy.
30. Ngāti Kahungunu and the DHB have jointly established a Māori Relationship Board.

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31. The establishment, in 1997, and the continuance of the Māori Provider Development Scheme, has resulted in ongoing funding to Napier Māori health providers to provide services to Māori.

Current Māori health policy

32. The current New Zealand Health Strategy, He Korowai Oranga, Whakatataka provides:

"The Government is committed to fulfilling the special relationship between iwi and the Crown under the Treaty of Waitangi. The principles of Partnership, Participation and Protection (derived from the Royal Commission on Social Policy) will continue to underpin that relationship.

Partnership: Working together with iwi, hapu, whanau and Maori communities to develop strategies for Maori health gain and appropriate health and disability services.

Participation: Involving Maori at all levels of the sector, in decision-making, planning, development and delivery of health and disability services.

Protection: Working to ensure Maori have at least the same level of health as non-Maori, and safeguarding Maori cultural concepts, values and practices."

Heads of Agreement

33. On 17 November 2006 negotiations culminated in the mandated negotiators and the Crown completing a Heads of Agreement as to how the contemporary aspects of the Wai 692 claim were to be resolved.

Return of the mana (mandate)

34. On 28 August 2008, Pirika Tom Hemopo returned the mana (mandate) in relation to the Wai 692 claim to the Ahuriri hapu mana whenua.

Negotiation of this Deed

35. In accordance with the understandings recorded in the Heads of Agreement:

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35.1 the Crown, the DHB and the mandated negotiators have negotiated this Deed;

35.2 in this Deed, while the Crown and the DHB have not made, and do not make, any acknowledgment of liability or obligation arising under the Treaty of Waitangi, or otherwise, in relation to the contemporary aspects of the Wai 692 claim:

35.2.1 the Crown has agreed to:

- (a) provide to the trustees of the Wai 692 Endowment Fund Trust or Ahuriri District Health, as the case may be, the Crown settlement funding; and
- (b) execute the rongoa contract; and

35.2.2 the DHB has agreed (in order to affirm its support of the settlement and to assist in achieving its objective of reducing health disparities by improving health outcomes for Māori and other population groups) to:

- (a) provide to Ahuriri District Health the settlement properties; and
- (b) execute the memorandum of commitment and the DHB contract or contracts; and

35.3 this Deed resolves and settles the contemporary aspects of the Wai 692 claim.

Formation of Ahuriri District Health

36. The Wai 692 Claims Committee has incorporated Ahuriri District Health as a trust board under the Charitable Trusts Act 1957 to receive:

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36.1 the Crown settlement funding referred to in clause 42; and

36.2 the settlement properties.

Agreement of Te Taiwhenua o Te Whanganui a Orotu Incorporated

37. Te Taiwhenua o Te Whanganui a Orotu Incorporated signs this Deed to confirm its agreement under clause 41 to the resolution and settlement of the contemporary aspects of the Wai 692 claim.

Support of Ngati Kahungunu Iwi Incorporated for the settlement

38. Ngati Kahungunu Iwi Incorporated has by at a board meeting on 26 September approved the settlement under this Deed.

Entry into this Deed

39. ACCORDINGLY:

39.1 the Parties:

39.1.1 wish, in a spirit of co-operation and compromise, to enter, in good faith, into this Deed to resolve and settle the contemporary aspects of the Wai 692 claim; and

39.1.2 agree as provided in this Deed; and

39.2 Te Taiwhenua o Te Whanganui a Orotu Incorporated agrees, as provided in clause 41, to the resolution and settlement of the contemporary aspects of the Wai 692 claim.

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2. ACKNOWLEDGEMENTS

40. The Parties acknowledge that this Deed and the settlement:
- 40.1 represent the result of good faith negotiations conducted in the spirit of co-operation and compromise;
 - 40.2 represent a practical resolution of the contemporary aspects of the Wai 692 claim; and
 - 40.3 are fair in the circumstances.



3. **RESOLUTION OF THE CONTEMPORARY ASPECTS OF
THE WAI 692 CLAIM**

41. The Parties, and Te Taiwhenua o Te Whanganui a Orotu Incorporated,
agree:

41.1 from the settlement date:

41.1.1 the contemporary aspects of the Wai 692 claim are
fully and finally resolved and settled;

41.1.2 the Crown, the DHB, and all Crown health entities
(as defined in clause 8 of the amended statement of
claim for Wai 692 appended to this Deed), are
released and discharged from all obligations and
liabilities in respect of the contemporary aspects of
the Wai 692 claim; and

41.1.3 proceedings about the contemporary aspects of the
Wai 692 claim, this Deed or the settlement redress
must not be commenced or pursued in any court,
tribunal (including the Waitangi Tribunal) or other
judicial body;

41.2 clause 41.1.3 does not prevent proceedings about the
interpretation or enforcement of this Deed or the settlement
contracts; and

41.3 historical aspects of the Wai 692 claim relating to matters that
occurred before 21 September 1992 (including the matters
referred to in clause 11.1) are to be addressed under the
framework for settlements of historical Treaty claims.

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4. THE SETTLEMENT AND ITS IMPLEMENTATION

Crown settlement funding and rongoa contract

42. The Crown must, immediately after being satisfied of the matters referred to in clause 61.1, pay to Ahuriri District Health the balance of the initial funding of \$150,000 specified in the Heads of Agreement, that has not been paid in advance of the date of this Deed by way of on-account payments, to contribute to the costs of:

42.1 establishing Ahuriri District Health; and

42.2 enabling Ahuriri District Health to enter into this settlement and to finalise:

42.2.1 under clauses 56-58, the terms of the rongoa contract; and

42.2.2 under clauses 59 and 60, the detailed business plan for, and the terms of, the DHB contracts.

43. The Crown must, on the settlement date:

43.1 pay to the trustees of the Wai 692 Endowment Fund Trust \$300,000 to hold on trust, and apply the income, in accordance with Part 5;

43.2 pay to Ahuriri District Health:

43.2.1 an amount (up to a maximum amount of \$200,000 plus any GST) equal to the purchase price payable by Ahuriri District Health under clause 48.3 for its purchase from the DHB of the Crown-funded settlement property; and

43.2.2 \$37,000 to contribute to the maintenance and renovation of the Crown-funded settlement property,

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and the DHB settlement property, to make them suitable for the purposes of the Trust; and

- 43.3 execute, on the terms determined under clauses 56 - 58, a three year contract for the provision of rongoa Māori health services to the public in Napier (including, if agreed, provision for a person to be trained to provide those services) for a value of \$108,000 (exclusive of any GST) for each of the three years from the date of signing of the contract.

DHB properties and memorandum of commitment

44. The DHB must on the settlement date:

- 44.1 transfer, on the terms set out in Part 2 of the Schedule, to Ahuriri District Health:

44.1.1 the Crown-funded settlement property; and

44.1.2 the DHB settlement property; and

- 44.2 enter into a memorandum of commitment with Ahuriri District Health on the terms set out in Part 5 of the Schedule recording the basis for the future relationship between the DHB and Ahuriri District Health.

DHB contract or contracts

45. The DHB must, as soon as practicable after the settlement date, execute, on the terms determined under clauses 59 and 60, a contract or two contracts with a total value of:

- 45.1 \$446,000 (exclusive of any GST) for the first year from the date of execution; and

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45.2 \$537,000 (exclusive of any GST) for each of the following two years.

46. The DHB contract or contracts under clause 45 are to provide for delivery of either or both of the following to the public in Napier:

46.1 oral health services; and

46.2 community health/he oraanga services to integrate and co-ordinate the delivery of health and social services.

Registration as a charity of Ahuriri District Health

47. Ahuriri District Health agrees, as soon as practicable after this Deed, to register as a charitable entity under the Charities Act 2005.

Determination of settlement properties and Crown funding for Crown-funded settlement property

48. The Parties agree:

48.1 the Crown-funded settlement property is to be:

48.1.1 3 Longfellow Avenue, Marenui, Napier (CT 182/18, Hawke's Bay Land Registration District, Lot 10 DP 9857, 809m², more or less, subject to section 59 Land Act 1948); or

48.1.2 if clause 50 applies to that property, a replacement property determined under clauses 51 - 55 to which clause 50 does not apply; and

48.2 the DHB settlement property is to be:

48.2.1 65 Geddis Avenue, Marenui, Napier (CT M3/1138, Hawke's Bay Land Registration District, Lot 9 DP

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9857, 809m², more or less, subject to section 59 Land Act 1948 and Caveat 601664.20 by Crown Health Hawke's Bay Limited pursuant to clause 4 of the First Schedule to Health Reforms (Transitional Provisions) Act 1993); or

48.2.2 if clause 50 applies to that property, a replacement property determined under clauses 51 - 55 to which clause 50 does not apply; and

48.3 the purchase price payable by Ahuriri District Health for the Crown-funded settlement property, but that purchase price is to be funded by the Crown under clause 43.2.1, is:

48.3.1 \$200,000, plus GST if any, if the property is 3 Longfellow Avenue, Marenui, Napier; or

48.3.2 the amount determined under clause 52, if the property is a replacement property determined under clauses 51 - 55; and

48.3.3 payable in accordance with paragraph 4.2 of the terms of transfer of settlement properties provided in Part 2 of the Schedule.

49. As soon as practicable after the date of this Deed, the DHB must consult in accordance with clause 43(4)(a) of Schedule 3 to the Act with its resident population about, and seek the Minister of Health's approval under clause 43(1) of Schedule 3 to the Act to, the transfer under this deed to Ahuriri District Health (a **settlement transfer**) of each of the properties referred to in clauses 48.1.1 and 48.2.1.

50. This clause applies to a property referred to in clause 48.1.1 or clause 48.2.1 if:

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- 50.1 after the DHB has sought under clause 49 the Minister of Health's approval under clause 43(1) of Schedule 3 to the Act to a settlement transfer of that property, the Minister advises the DHB that he or she:
- 50.1.1 does not give that approval; or
 - 50.1.2 gives his or her approval but subject to conditions that in the reasonable opinion of the DHB are impracticable; or
- 50.2 if the property is destroyed or damaged before the settlement date and Ahuriri District Health cancels the transfer of the property in accordance with paragraph 23.1 of the terms of transfer of settlement properties provided in Part 2 of the Schedule.
51. If clause 50 applies to a property, the DHB and Ahuriri District Health must use their best endeavours to agree in writing, as soon as practicable, a property to replace that property for the purposes of this agreement (a **replacement property**).
52. A replacement property may replace the property referred to in clause 48.1.1 only if the DHB, Ahuriri District Health, and the Crown agree in writing the amount of the purchase price (up to a maximum amount of \$200,000 plus GST if any) payable by Ahuriri District Health for the property, but to be funded by the Crown under clause 43.2.1.
53. A replacement property for a property referred to in clause 48.1.1 or 48.2.1 must, so far as possible, be:
- 53.1 located in a similar area;
 - 53.2 of similar condition and value; and
 - 53.3 suitable for the same purposes.

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54. As soon as practicable after a replacement property is agreed under clause 51 and, if clause 52 applies, its purchase price is agreed in accordance with that clause, the DHB must, in accordance with clause 49, consult about and seek the Minister of Health's approval in relation to a settlement transfer of that property.
55. If clause 50 applies in relation to a replacement property, clauses 51 - 55 continue to apply, with all necessary changes, in relation to that replacement property, as if were named in clause 48.1.1 or clause 48.2.1, as the case may be, until a replacement property is determined under those clauses to which clause 50 does not apply.

Determination of terms of rongoa contract

56. Indicative terms of the contract to be executed by the Crown under clause 43.3 (the **rongoa contract**) are set out in part 3 of the Schedule, except that at the date of this deed the following terms in that part of the schedule are not agreed (the **outstanding terms**):
- 56.1 any term that is in square brackets;
 - 56.2 any term that is not completed; and
 - 56.3 any term that is identified as not being agreed.
57. Immediately after the date of this deed Ahuriri District Health and the Crown will use their best endeavours to finalise, and record in writing their finalisation of, the outstanding terms of the rongoa contract in part 3 of the Schedule, including the provider or providers under that contract.
58. The rongoa contract is to be:
- 58.1 unless otherwise agreed, on the terms as set out in part 3 of the schedule with the outstanding terms as finalised under clause 57; and

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58.2 with a provider or providers determined under clause 57.

Determination of the DHB contract or contracts

59. Ahuriri District Health and the DHB must take the following steps to finalise the terms of the DHB contract or contracts to be executed by the DHB under clauses 45 and 46:

59.1 Ahuriri District Health must within 20 business days of the Crown paying the balance of the initial funding under clause 42 appoint a project manager to develop a detailed business plan in relation to:

59.1.1 the service specifications for the oral health services, and/or the community health/he oranga services, to be provided under the DHB contract or contracts;

59.1.2 the number of interventions;

59.1.3 the identity of the provider or providers;

59.1.4 if both oral health services, and community health/he oranga services, are to be provided, the split of the DHB funding referred to in clause 45 between the two types of services; and

59.1.5 any other matters in relation to the DHB contract or contracts that Ahuriri District Health and the DHB agree are to be provided for in the business plan;

59.2 the project manager may be located at the DHB and must, within 40 business days of his or her appointment, provide the DHB and Ahuriri District Health with a draft business plan in relation to the DHB contract or contracts; and

59.3 Ahuriri District Health and the DHB must:

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59.3.1 within 20 business days of the project manager providing the DHB with a draft business plan in relation to the DHB contracts under clause 59.2, agree on the business plan; and

59.3.2 within 20 business days of agreeing on the business plan, agree on the terms of the DHB contract or contracts; and

59.3.3 if Ahuriri District Health and the DHB do not agree on the business plan, or on the terms of the DHB contract or contracts, they must, as soon as practicable and in any event immediately after the expiry of the time for agreeing on the plan or the contract or contracts, refer the matter for dispute resolution in accordance with the process set out in Part 4 of the Schedule.

60. The DHB contract or contracts are to be on the terms, and with the provider or providers, determined under clause 59.

Determination of settlement date

61. The settlement date is to be the date that is 10 business days after the last of the following to occur:

61.1 the Crown being satisfied that:

61.1.1 Te Taiwhenua o Te Whanganui a Orotu Incorporated has approved the settlement under this Deed; and

61.1.2 this deed has been duly executed by or on behalf of Te Taiwhenua o Te Whanganui a Orotu Incorporated;

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- 61.2 the Crown-funded settlement property has been determined under clauses 48 - 55;
- 61.3 the DHB settlement property has been determined under clauses 48 - 55;
- 61.4 the terms of the rongoa contract (including the provider or providers for that contract) have been finalised under clause 57;
- 61.5 Ahuriri District Health has appointed the project manager under clause 59.1; and
- 61.6 Ahuriri District Health, and the Wai 692 Endowment Fund Trust, have been registered as charitable entities under the Charities Act 2005.

Termination of this Deed

62. Either Ahuriri District Health, the Crown or the DHB may terminate this Deed if all the matters provided by clauses 61.1 to 61.6 have not occurred by 12 months after the date of this Deed.
63. Ahuriri District Health, the Crown or the DHB may terminate this Deed under clause 62 by giving notice to the others.
64. Before Ahuriri District Health, the Crown or the DHB may terminate this Deed under clause 62, it must give the others at least 20 business days notice of an intention to terminate under that clause. The Crown must consult with the DHB before giving notice of an intention to terminate.
65. If this deed is terminated under clause 62:
- 65.1 it, and the settlement, are at an end;

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- 65.2 no person will have any rights or obligations under it; and
- 65.3 to avoid doubt, Ahuriri District Health has no obligation to repay any of the initial funding referred to in clause 42 paid to it.

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5. WAI 692 ENDOWMENT FUND

66. In accordance with clause 43.1 the Crown must, on the settlement date, settle \$300,000 on the trustees of the Wai 692 Endowment Fund Trust to hold on the trusts set out in this Part.
67. The trustees of the Wai 692 Endowment Fund Trust acknowledge and agree that:

Initial Trustees

- 67.1 they, being Pirika Tom Hemopo, Barry Wilson, Ranui Toatoa, Roderick Nigel Kerry Hadfield, Desma Kemp Ratima, Matthew Matuakore Bennett, Papara Caroline Carroll, Marjorie Te Maari Joe, Joinella Mouru Patricia Maihi-Carroll are appointed the initial Trustees of the Wai 692 Endowment Fund Trust;

Establishment and purpose of the Wai 692 Endowment Fund Trust

- 67.2 they hold the Wai 692 Endowment Fund upon the trusts set out in this Part;
- 67.3 they must not distribute or appropriate the capital of the Fund, but may use its income only for the charitable purposes of:
- 67.3.1 relieving poverty by improving and promoting the health of Ahuriri Māori; and
- 67.3.2 advancing education that will improve or promote the health of Ahuriri Māori;
- 67.4 they will register the Wai 692 Endowment Fund Trust as a charitable entity under the Charities Act 2005;

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Records

67.5 they must keep complete and accurate records in relation to their holding, and distribution, of the Fund, including:

67.5.1 accounts; and

67.5.2 minutes of meetings;

Annual report

67.6 they must, within three months after the end of the financial year of the Wai 692 Endowment Fund Trust:

67.6.1 prepare a written annual report signed by two Trustees that includes:

- (a) the amounts distributed from the Fund and to whom; and
- (b) financial statements of the Trust audited by a public accountant in public practice; and

67.6.2 provide the annual report to any entity that:

- (a) becomes a party to a deed with the Crown settling the historical Treaty claims affecting Ahuriri (including the historical aspects of the Wai 692 claim and the Wai 55, 168 and 400 claims); or
- (b) subsequently covenants with the Crown to be bound by that deed of settlement; and
- (c) receives some or all of the redress under that deed of settlement;

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- 67.7 they must promptly provide the most recent annual report to anyone who requests it;

Subsequent Trustees

- 67.8 they must by deed appoint as a Trustee an individual who is appointed a trustee of Ahuriri District Health as soon as practicable after he or she is appointed a trustee of Ahuriri District Health;

- 67.9 a Trustee ceases to be a Trustee if he or she:

67.9.1 ceases to be a trustee of Ahuriri District Health;

67.9.2 dies or becomes mentally incapable or of unsound mind;

67.9.3 becomes bankrupt or makes an assignment to creditors;

67.9.4 is convicted of an offence involving dishonesty and/or sentenced to imprisonment, home detention, or community work;

67.9.5 becomes disqualified from holding office under the Charities Act 2005;

67.9.6 is absent without leave from three consecutive meetings of Trustees; or

67.9.7 resigns;

No payments to Trustees

- 67.10 Trustees are not to be paid remuneration, reimbursed for expenses, or receive profits, for acting as Trustees;

BRG

General provisions

67.11 the Trustees of the Wai 692 Endowment Fund:

Meetings

67.11.1 may meet as often, and regulate their meetings, as they consider fit;

Powers

67.11.2 in addition to the powers provided by the Trustee Act 1956 and the general law, may:

- (a) receive on trust gifts or grants of money or property to be held as capital for a purpose that is for, or within, the purposes of the Trust; and
- (b) take any one or more of the following steps in relation to any of the Fund's income for a financial year:
 - (i) distribute it;
 - (ii) appropriate it for distribution, even if it has not been received;
 - (iii) retain it, to be distributed as income in a future financial year;

Receipts for payments

67.11.3 may receive a complete discharge for a payment of income from the Fund to a recipient if they receive a receipt from a person who appears authorised to give receipts for the recipient;

67.11

Reliance on professional or expert advice

67.11.4 when acting in good faith, may rely on professional or expert advice;

Indemnity

67.11.5 (without prejudice to any indemnity given by law) are entitled to be reimbursed for and indemnified out of the Fund:

- (a) for all liabilities that are properly incurred in carrying out the trusts set out in this Part; and
- (b) against all actions and claims in respect of anything done or omitted in good faith in relation to the trusts set out in this Part;

Winding up

67.11.6 must wind up the Trust if:

- (a) Ahuriri District Health is put into liquidation or dissolved or its trustees resolve to wind it up; or
- (b) a majority of the Trustees so resolve;

67.11.7 must, on a winding up of the Wai 692 Endowment Fund Trust, distribute all surplus assets (after payment of all liabilities) to a charitable trust or charitable trusts whose purposes include any or all of the following:

- (a) relieving poverty by improving and promoting the health of Ahuriri Māori;

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- (b) advancing education that will improve or promote the health of Ahuriri Māori; or
- (c) relieving poverty by improving and promoting the health of the Napier community.

68. This Part may be amended by deed signed by the Crown and by two Trustees of the Trust but no amendment is effective if the purpose of the Trust ceases to be charitable.

Interpretation

69. In this Part, unless the context otherwise requires:

69.1 **Ahuriri Māori** means all Māori who reside, and/or access their health services, within the rohe of Ahuriri;

69.2 **balance date**, in relation to the Trust, means:

69.2.1 30 June; or

69.2.2 another date adopted by the Trustees of the Fund;

69.3 **financial year**, in relation to the Wai 692 Endowment Fund Trust, means:

69.3.1 in the case of its first financial year, the period from the Settlement Date to its balance date; and

69.3.2 in the case of its subsequent financial years:

(a) a year ending on its balance date; or

(b) a period shorter or longer than a year ending in its balance date and resulting from a change in that date;

69.4 **rohe of Ahuriri**:

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- 69.4.1 means the area specified as the rohe of Ahuriri by the map included in Part 6 of the Schedule; and
- 69.4.2 includes any additional area or areas that a resolution of the trustees of Ahuriri District Health specify as forming part of the rohe of Ahuriri for the purposes of the deed constituting Ahuriri District Health;
- 69.5 the **Trustees of the Fund** or **Trustees** means those individuals who have been appointed as Trustees under this Part and who have not ceased to be Trustees under clause 67.9;
- 69.6 the **Wai 692 Endowment Fund** or **Fund** means:
- 69.6.1 the amount of \$300,000 settled on trust by the Crown on the Trustees of the Fund under clause 43.1;
- 69.6.2 all other money or property provided to, or held by, the Trustees of the Fund subject to the trusts set out in this Part; and
- 69.6.3 all income or gains from money or property forming part of the Fund; and
- 69.7 the **Wai 692 Endowment Fund Trust** or **Trust** means the trust established by this Part on which the Wai 692 Endowment Fund is held by the Trustees of the Fund.
- BL

6. TAX INDEMNITY

70. The Minister will, on notice from an Indemnified Party, indemnify the Indemnified Party for:

70.1 any income tax, GST or gift duty that the Commissioner advises the Indemnified Party in writing is payable by the Indemnified Party in respect of:

70.1.1 the payment of the Crown settlement funding; or

70.1.2 the transfer under this Deed of the Crown-funded settlement property or the DHB settlement property; and

70.2 any interest, late payment penalty or shortfall penalty that the Commissioner advises the Indemnified Party in writing is payable by the Indemnified Party in relation to income tax or GST that the Minister indemnifies the Indemnified Party for under this clause.

71. The Minister will meet the Minister's obligations under clause 70 by making the indemnity payment to the Commissioner on behalf of the Indemnified Party.

72. Where the Indemnified Party receives written advice from the Commissioner that may give rise to an indemnity payment, the Indemnified Party must within 10 business days of receiving that advice:

72.1 by notice to the Minister, refer to the Minister's obligations under this Part; and

72.2 attach a copy of the Commissioner's advice to that notice.

BRL

73. The Minister is not (despite clause 70.2) liable to indemnify the Indemnified Party for any interest, late payment penalty or shortfall penalty that arises as a result of the Indemnified Party not complying with the Indemnified Party's obligation to notify the Minister under clause 72.
74. The Indemnified Party must immediately repay to the Crown the amount of any indemnity payment subsequently refunded by the Commissioner.
75. Subject to the Indemnified Party being indemnified to the Indemnified Party's reasonable satisfaction against any reasonable cost, loss, expense, or liability, or any tax which it may incur, the Minister may:
- 75.1 by notice to the Indemnified Party require the Indemnified Party to:
- 75.1.1 take into account any right to defer the payment of tax;
- 75.1.2 take all steps the Minister may specify to respond to and/or contest any notice, notice of proposed adjustment or assessment for tax, where expert legal tax advice indicates it is reasonable to do so; and
- 75.1.3 consult and/or collaborate with the Minister in the preparation for the Crown or the Indemnified Party of an application for a binding or non-binding ruling from the Commissioner with respect to the payment or transfer of :
- (a) the Crown settlement funding; or

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- (b) the transfer under this Deed of the Crown-funded settlement property or the DHB settlement property;

- 75.2 nominate and instruct counsel on behalf of the Indemnified Party whenever the Minister exercises the Minister's rights under clause 75.1; and
- 75.3 recover from the Commissioner any tax paid and subsequently held to be refundable.
76. Notices to the Minister under this Part must be given in accordance with clauses 84 and 85 to the following address (until any other address is given by notice) - c/o The Secretary to the Treasury, 1 The Terrace, PO Box 3724, Wellington, Facsimile No: (04) 473 0982.
77. In this Part:
- 77.1 "**Commissioner**" means the Commissioner of Inland Revenue;
- 77.2 "**Indemnified Party**" means each of the following:
- 77.2.1 the Trustees of the Wai 692 Endowment Fund Trust;
- and
- 77.2.2 Ahuriri District Health;
- 77.3 "**indemnity payment**" means a payment by the Minister under clause 70;
- 77.4 "**Minister**" means the Minister of Finance;
- 77.5 the Minister acts on behalf of the Crown under section 65ZD of the Public Finance Act 1989; and
- 77.6 all clause references are to clauses in this Part.

7. MISCELLANEOUS MATTERS

78. This Deed:

78.1 does not confer legal rights on anyone except the Parties; and

78.2 is not effective until it is signed by the Parties and Te Taiwhenua o Te Whanganui a Orotu Incorporated.

79. The Chief Executive of the Ministry of Health must make copies of this Deed available:

79.1 for inspection free of charge, and for purchase at a reasonable price, at the head office of the Ministry of Health in Wellington during working hours; and

79.2 free of charge, on an internet site maintained by or on behalf of the Ministry of Health.

80. The Crown or the Wai 692 claimants may, on or after the settlement date, by an individual or joint notice in writing to the Waitangi Tribunal:

80.1 advise the Tribunal of the settlement; and

80.2 request the Tribunal to amend its register of claims, and adopt its procedures, to reflect the settlement.

81. Subject to clause 68, this Deed may not be amended unless the amendment is in writing and signed by:

81.1 any two trustees of Ahuriri District Health on behalf of Ahuriri District Health and the Wai 692 claimants;

81.2 the DHB; and

81.3 the Crown.

82. This Deed constitutes:

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- 82.1 the entire agreement in relation to the matters in it; and
 - 82.2 supersedes all earlier negotiations, understandings and agreements (including the Terms of Negotiation and the Heads of Agreement).
83. Except as provided in this Deed or a settlement document:
- 83.1 a failure by a Party to exercise a power or right under this Deed, or a settlement document, does not operate as a waiver.
 - 83.2 a single, or partial, exercise of a right under or arising from this Deed, or a settlement document, does not preclude further exercises of that right; and
 - 83.3 a Party may not transfer or assign a right or obligation under or arising from this Deed or a settlement document.
84. A notice under this Deed must be:
- 84.1 signed by or on behalf of the person sending it and may:
 - 84.1.1 in the case of the Wai 692 claimants and Ahuriri District Health, be signed by any two trustees of Ahuriri District Health; and
 - 84.1.2 in the case of the Wai 692 Endowment Trust, be signed by any two trustees of that trust; and
 - 84.2 until any other address or facsimile number is given by notice, given in writing to the addresses or facsimile numbers of the other persons as set out below:

BL

Crown's address:

The Solicitor-General
 Crown Law Office
 Level 10
 Unisys House
 56 The Terrace
 Wellington
 PO Box 2858
 Wellington
 Facsimile No. (04) 473 3482

DHB's address:

Chief Executive Officer
 Hawkes' Bay DHB
 Hawkes' Bay Hospital
 Omaha Road
 Private Bag 9014
 Hastings
 Facsimile No. (06) 878 1648

Address for Wai 692**Claimants,****Ahuriri****District Health****and the Trustees of the****Wai 692 Endowment****Fund Trust**

c/- Wilson Putt Holdings
 1st Floor Lowe House
 304 Fitzroy Avenue
 Hastings
 PO Box 121
 Hastings
 Facsimile No. (06) 870 8035

85. Delivery of a notice may be made:

- 85.1 by hand (which will be treated as having been received at the time of delivery);
- 85.2 by post with prepaid postage (which will be treated as having been received on the second day after posting); or

66

85.3 by facsimile (which will be treated as having been received on the day of transmission).

86. If a notice is treated as having been received on a day that is not a business day, or after 5:00pm on a business day, that notice will be treated as having been received the next business day.

8. DEFINITIONS AND INTERPRETATION

87. In this Deed, unless the context requires otherwise:

87.1 **Act** means the New Zealand Public Health and Disability Act 2000;

87.2 **Ahuriri District Health** means the board incorporated on 1 October 2008 under that name under Part 2 of the Charitable Trusts Act 1957;

87.3 **Ahuriri District Health deed of trust** means the deed of trust dated 1 October 2008 signed by Pirika Tom Hemopo, Barry Wilson, Ranui Toatoa, Roderick Nigel Kerry Hadfield, Desma Kemp Ratima, Matthew Matuakore Bennett, Papara Caroline Carroll, Marjorie Te Maari Joe, Joinella Mouru Patricia Maihi-Carroll as the initial trustees, as that deed may be amended from time to time in accordance with its terms;

87.4 **Ahuriri hapu mana whenua** means the seven hapu of Ahuriri, namely, Ngāti Hinepare, Ngāti Mahu, Ngāti Matepū, Ngāi Tāwhao, Ngāi Te Ruruku, Ngāti Paarau and Ngāti Tu;

87.5 **business day** means the period of 9am to 5pm on any day other than:

87.5.1 Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday and Labour Day;

87.5.2 a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and

87.5.3 the days observed as the anniversaries of the provinces of Wellington and Hawke's Bay;

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87.6 **contemporary aspects of the Wai 692 claim:**

87.6.1 means the parts of the Wai 692 claim that relate to:

- (a) the provision of health services and hospital services in the period on or after 21 September 1992 to the date of this Deed (the “contemporary period”);
- (b) health re-structuring during the contemporary period; and
- (c) decision-making during the contemporary period relating to:
 - (i) the regionalisation of Hawke’s Bay hospital services in Hastings; or
 - (ii) the closure of Napier Hospital; and

87.6.2 includes:

- (a) consultation with Māori concerning, and participation by Māori in, the matters referred to in clause 87.6.1;
 - (b) representation of Māori on, and provision of health services to Māori by, agencies providing health services and/or hospital services during the contemporary period; and
 - (c) any failure to consider Māori needs in relation to the matters referred to in clause 87.6.1;
- b/r

- 87.7 **Crown** has the meaning given to it in section 2(1) of the Public Finance Act 1989;
- 87.8 **Crown-funded settlement property** means the property determined under clause 48.1;
- 87.9 **Crown settlement funding** means the funding to be paid by the Crown to:
- 87.9.1 the trustees of the Wai 692 Endowment Fund Trust under clause 43.1; and
- 87.9.2 Ahuriri District Health under clause 42 and 43.2;
- 87.10 **Deed and Deed of Settlement** means this Deed;
- 87.11 **DHB** means the Hawke's Bay District Health Board established under section 19 of the New Zealand Public Health and Disability Act 2000;
- 87.12 **DHB contract or contracts** means the contract or contracts to be executed by the DHB under clause 45;
- 87.13 **DHB settlement property** means the property determined under clause 48.2;
- 87.14 **GST** means goods and services tax chargeable under the Goods and Services Tax Act 1985 and includes any interest or penalty payable in respect of, or on account of, the late or non-payment of, any GST;
- 87.15 **Heads of Agreement** means the Heads of Agreement document initialled for the Crown and the mandated negotiators on 17 November 2006 and referred to in clause 33;

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- 87.16 **historical aspects of the Wai 692 claim** means the parts of the the Wai 692 claim that relate to matters that occurred before 21 September 1992;
- 87.17 **mandated negotiators** means Hana Lyola Cotter (until her passing away on 10 December 2006), Pirika Tom Hemopo and Desma Kemp Ratima (who, from 14 December 2003, has acted as the representative of Takuta Hohepa Mei Emery);
- 87.18 **Ngāti Kahungunu Iwi Incorporated** is an incorporated society incorporated on 19 December 1988 and having its registered office at 509 Orchard Road, Hastings;
- 87.19 **memorandum of commitment** means the memorandum of commitment to be executed by the DHB under clause 44.2;
- 87.20 **outstanding terms** has the meaning given to it by clause 56;
- 87.21 **Party** means each of the following:
- 87.21.1 the Wai 692 claimants;
 - 87.21.2 Ahuriri District Health;
 - 87.21.3 the trustees of the Wai 692 Endowment Fund Trust;
 - 87.21.4 the Crown; and
 - 87.21.5 the DHB;
- 87.22 **replacement property** has the meaning given to it by clause 51;
- 87.23 **rongoa contract** means the contract to be executed by the Crown under clause 43.3;

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87.24 **settlement** means the resolution and settlement of the contemporary aspects of the Wai 692 claim under this Deed;

87.25 **settlement contracts** means each of the following:

87.25.1 the rongoa contract; and

87.25.2 the DHB contract or contracts;

87.26 **settlement date** means the date determined under clause 61;

87.27 **settlement documents** means a document entered into by the Crown or the DHB to give effect to this Deed including:

87.27.1 the settlement contracts; and

87.27.2 the memorandum of commitment;

87.28 **settlement property** means each of the Crown-funded settlement property and the DHB property;

87.29 **settlement redress** means:

87.29.1 the Crown settlement funding;

87.29.2 the transfer under this deed of the settlement properties;

87.29.3 the execution by the Crown of the rongoa contract; and

87.29.4 the execution by the DHB of the DHB contract or contracts and the memorandum of commitment;

87.30 **settlement transfer** has the meaning given to it by the clause 49;

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- 87.31 **Statement of Position** means the statement of position of the Wai 692 claimants referred to in clause 13;
- 87.32 **tax** includes income tax, GST and gift duty;
- 87.33 **tax legislation** means any legislation that imposes, or provides for, the administration of tax;
- 87.34 **Te Taiwhenua o Te Whanganui a Orotu Incorporated** is an incorporated society incorporated on 10 August 1989 and having its registered office at 6 Owen Street, Napier;
- 87.35 **Terms of Negotiation** means the Terms of Negotiation document executed on 3 November 2004 by the Crown and the mandated negotiators for the Wai 692 claimants and referred to in clause 19;
- 87.36 **trustees of Ahuriri District Health** means the trustees appointed from time to time under the Ahuriri District Health deed of trust;
- 87.37 **Trustees of the Wai 692 Endowment Fund Trust** means the trustees from time to time of the Wai 692 Endowment Fund Trust;
- 87.38 **Wai 692 claim** and **claim** means the claim submitted in January 1998 by the late Hana Lyola Cotter, Takuta Hohepa Mei Emery and Pirika Tom Hemopo to the Waitangi Tribunal and allocated the reference number Wai 692 by the Tribunal and includes all amendments to the claim (the final statement of claim being included as an appendix to this Deed);
- 87.39 **Wai 692 claimants** and **claimants** means the claimants for the time being under the Wai 692 claim who, at the date of this deed, include and are represented by Takuta Hohepa Mei

Emery and Pirika Tom Hemopo being the surviving claimants named in paragraph 1 of the final statement of claim (the late Hana Lyola Cotter having died);

87.40 **Wai 692 Claims Committee** means the mandated negotiators and the individuals referred to in clause 22; and

87.41 **Wai 692 Endowment Fund Trust** means the trust established under Part 5.

88. In the interpretation of this Deed, unless the context otherwise requires:

88.1 headings appear as a matter of convenience and do not affect the interpretation of this Deed;

88.2 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

88.3 the singular includes the plural and vice versa;

88.4 words importing one gender include the other genders;

88.5 a reference to the Schedule is to the Schedule to this Deed;

88.6 a reference to a Part, clause, paragraph, or appendix is to a Part, clause, paragraph, or appendix of or to this Deed;

88.7 a reference to legislation includes a reference to that legislation as amended, consolidated or substituted;

88.8 a reference to a Party in this Deed, or in any other document under this Deed, includes that Party's permitted successors;

88.9 an agreement on the part of two or more persons binds each of them jointly and severally;

56

- 88.10 a reference to a document, including this Deed, includes a reference to that document as amended, novated or replaced from time to time;
- 88.11 a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 88.12 in the event of a conflict between a provision in the main body of this Deed (namely, any part of this Deed except the schedule and the appendix) and the schedules or the appendix then the provision in the main body of this Deed prevails; and
- 88.13 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day.

BRL

SIGNED as a deed on 3 October 2008.

SIGNED for and on behalf of
HER MAJESTY
THE QUEEN in
right of New Zealand by:

Hon Mita Ririnui the Associate
Minister of Health

Hon Parekura Horomia the Minister
of Māori Affairs

in the presence of:

WITNESS

Name: Anthony Miller
Occupation: Public Servant
Address: Wellington

SIGNED for and on behalf of the
HAWKE'S BAY DISTRICT
HEALTH BOARD by Sir John
Anderson its commissioner appointed
under section 31 of the New Zealand
Public Health & Disability Act 2000

in the presence of:

WITNESS

Name: Chris Clarke
Occupation: CEO Hawke's Bay PHB
Address: Hawke's Bay

BR

THE FOLLOWING PERSONS SIGN THIS DEED

As Wai 692 claimants:

SIGNED

on behalf of **Takuta Hohepa Mei Emery** by his duly authorised attorney
Pirika Tom Hemopo

) Pirika Tom Hemopo

in the presence of:

WITNESS

[Signature]

Name:

Tracee Te Hura

Occupation:

Director Maori Health

Address:

PO Box 9014 Hastings

SIGNED

by **Pirika Tom Hemopo**

) Pirika Tom Hemopo

in the presence of:

WITNESS

[Signature]

Name:

Tracee Te Hura

Occupation:

Director Maori Health

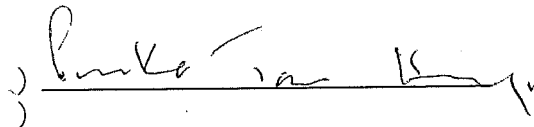
Address:

HANA COTTER [Signature]

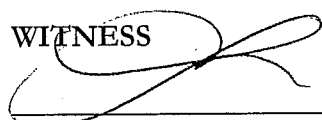
THE FOLLOWING PERSONS SIGN THIS DEED:

As trustees for and on behalf of Ahuriri District Health:

As trustees of the Wai 692 Endowment Fund Trust:

SIGNEDby **Pirika Tom Hemopo**) 

in the presence of:

WITNESS

Name:

Tracee Tetahi

Occupation:

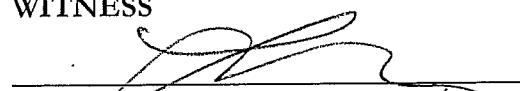
Director Maori Health

Address:

PO Box 9014 Hastings

SIGNEDby **Barry Wilson**) 

in the presence of:

WITNESS

Name:

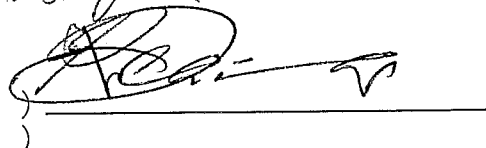
Tracee Tetahi

Occupation:

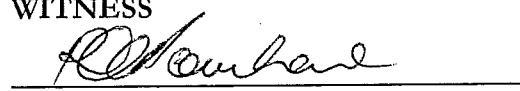
Director Maori Health

Address:

PO Box 9014 Hastings

SIGNEDby **Ranui Toatoa**) 

in the presence of:

WITNESS

Name:

R Pounhave

Occupation:

Te Kete Hauora

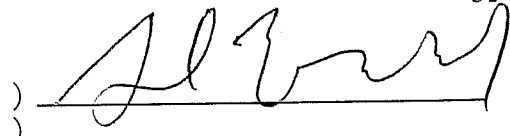
Address:

Wellington

DK

SIGNED

by Roderick Nigel Kerry Hadfield



in the presence of:

WITNESS



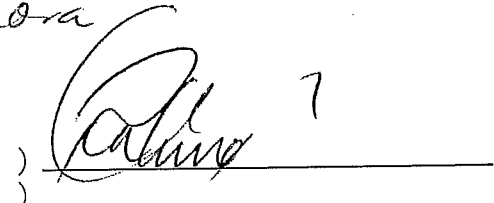
Name: R. Pounhare

Occupation: Te Kete Hauora

Address: Wellington

SIGNED

by Desma Kemp Ratima



in the presence of:

WITNESS



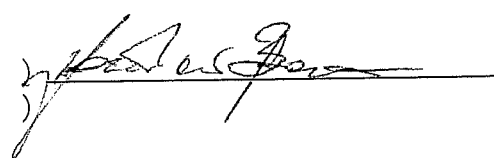
Name: Taina Wall

Occupation: DDG Maori Health

Address: 141 Avo St.
Wellington

SIGNED

by Matthew Matuakore Bennett



in the presence of:

WITNESS



Name: Taina Wall

Occupation: DDG Maori Health

Address: 141 Avo St
Wellington.

DRG

SIGNED
by Papara Caroline Carroll

) P.B. Carroll
)

in the presence of:

WITNESS

Robin Gwynn

Name: R. Gwynn

Occupation: AUTHOR

Address: 23 CLYDE RD
NAPIER

SIGNED
by Majorie Te Maari Joe

) M. Joe
)

in the presence of:

WITNESS

Robin Gwynn

Name: R. Gwynn

Occupation: AUTHOR

Address: 23 CLYDE RD NAPIER

SIGNED
by Joinella Mouru Patricia Maihi-
Carroll

) Joinella Maihi-Carroll
)

in the presence of:

WITNESS

Merehana Skipworth

Name: MEREHANA SKIPWORTH.

Occupation: Retired.

Address: 28 MURPHY RD NAPIER.

b26

THE COMMON SEAL of
 Ahuriri District Health
 was affixed to this Deed in the
 presence of:



[Signature]

Chairperson

[Signature]
 Trustee

WITNESS

[Signature]

Name: ANTHONY RUAKERE

Occupation: SOLICITOR

Address: AUCKLAND

SIGNED by Te Taiwhenua o Te
 Whanganui a Orotu Incorporated

[Signature]
[Signature]

in the presence of:

WITNESS

[Signature]

Name: MEREHANA SKIPWORTH

Occupation: Retired

Address: 28 Murphy Rd Janadale Napier

BR

Hazel Grainger - Te Haroto. Masae,

Danyelle Tihanyi

HINE WAINA PETANE

Twana Arani

Rumira Rameka Ngati Pahanuwa

Olger Rameka Ngati Pahanuwa

Charlie Lambert Ngati Pahanuwa.

Rangitahi Dewton Ngati Pahanuwa.

Matira Hauaikirangi Ngati Parau.

Tahitanga Pomana Hauaikirangi Ngati Parau.

Tsimme Pomara Ngati PARAU.

Bridget Robson Te Rōpū Rangahau Hauora a Eru Pōmare

Lo Karati. Reihana. (Ngati Parau iwi)

Shayne Walker, Ngai Te Ipu

Lewa Idseff.

BERNICE GRAHAM - NAPIER.

Ashley Smeaton - South Africa

Graham Wainwright - England.

Laraina Hereto - Rongomāhine

Rongomāhine Namana - Rongomāhine

Dorothy Hereto

B. P. Hereto

Margaret Hika Ngati Rangitahi

Karara Hika Hika Ngarangione Ngati Rangitahi Ngati Rangitahi

Suki Hika Ngati Pahanuwa

Aaron Box - Māori

Alayna Holeranga (Box, Karara, Puri) Ngati Hinepāne,

Jaiden Box

P. L. Hika Petani Hika

DLA

WITNESSES SIGNED BELOW TO SUPPORT THE SETTLEMENT

~~SOMEKUNIS.~~
 NAPIER HEALTH ACTION
 GROUP INC.

Layden Baker

Des Kure

Ngati Hinepare

MAHU
 Ngai Tawhao

Matenga Marcus Campbell

Nanpara and Netikumar

E. Ratima nee (Ret.)
 EVELYN RATIMA nee (RETI)
 Ngai TATARA

Ngati Kurumokiti

MARANGA TU HE TALUA
 NGATI TU

Wai pawayara Marokina Anani Nelson McDermott
 m n n McDermott.

M. Le Rite (Wayne Te Rito)

Ngati Hinepare Onahe
 6 Ngatara Place Herkings

Chairman
 Rongomaiwahine Trust
 Mahua

L. H. Kerei (Gray) oee Keefe.

Ngati Pakaneta me Upokoriri

Louise Ra Heremia

Ngati Hinepare, Ngai Tawhao, Ngati Mahe

Edina Hilton. Ngati Pahiawera.

Karleen Mato Rongomaiwahine

Ruere Rauh Rongomaiwahine

Mareen Mua Rongomaiwahine, Ngati Porou

Maria Mua Rongomaiwahine

Pat. Magill - Pilot City Trust

Ngati Pahiawera - Ngai Tokomaru -
Muda Wana Teatou.

Nini Tekeo Spooner - Whareangi Marae.

Ani Keefe (Hancy) Pahiawera

Martha O'Brien (Antebury) Ahumia

Janet Huata

232 Putere RD Rongomai (Pahiawera)

Margaret Jayan

Rebun Wynn

William Kemp Hinepare Ngati mahu Nga Upokoiri

Ngati Tawhao

Kamhafa Kemp

Jayten Harston

Beverley Kemp-Harmer - Ngati Hinepare, Maahu, Tawhao

Janet Puna Spooner - Whareangi taku Marae Ahuiri

Levea Humea - Ngati Hinepare

Ahumi

NGATI HINEPARE

Rea Te Keo Mawama O'Brien Ngati Hinepare, Ngati Maahu,
Ngai Tawhao

Hilary Prentice - Prentice, Ngati Hinepare, Ngati Maahu, Ngai Tawhao

Anecia Prentice - Prentice, Ngati Hinepare, Ngati Maahu, Ngai Tawhao.

Tessa Robin - Ngati Pahiawera, Ngati Hui, Nga Upokoiri

MICHAEL KEMP - NGATI HINEPARE, MAHU, RUKUKU - Tu.

Elizabeth Gough Pakemokimoki Marae

Ahumi

HAH

WITNESSES SIGNED BELOW TO SUPPORT THE SETTLEMENT

Rev. Mr. Paul. Hoelawa Q.S.M

Rongo. mai-wakine / Ngati Kahungunu.

Andrea Mr Grogan

Ngati Raukawa. Ngati Kahungunu

Sophie Ropina Keefe J.M.W.

Ngati Pahauwera

Winifred Crawford. (nee WINIFRED ADAMS)
Ngati Kahungunu.

Sandra Mager. Ngati Kahungunu

Raewyn Kingi

Rauiri Aturangi Ngati Raukawa / Raukawa / Raukawa

Marlene Aturangi

Marianne Box (nee Karamia Purini)

Ngati Hinepare Ngati Maori

Rosemary Anne Smith

Ngati Kahungunu / Koroa / Wairua

QUERIDA WHATAIRA - STRICKLAND - NGATI PAHAUWERA.

Maria Harvey (nee Reti) Ngati Tu.

Hana Tepehe Wairua

Nga Kiriwani

OK

Charlie Whinnai Warkato, Te Arawa, Ngapuhi

B. Apurui

D. Haka Napeer Whararang

~~John Kaitiaki~~ - Wharangi Mame.

Mariana Dymov

Rita Keefe

Kristen Keefe * ~~Paumotu~~ Keefe *

P. Paumotu

Laura Wainohu

~~John~~

John Lamber

~~Robert Henshaw~~

A.R. Marawia

~~Clarence~~

Wendy Wainohu Kanaia Genua

Moreen LeOroa Taylor Ngali Hosi

Bruce & Warkato Ngali Tawhiao

Nancy Stone

Christine Puketapu

Hilda Rosemarie Poma

Stephanie Kane

~~John~~

~~John~~ Beamley

W. Lee Lee

Rajini Keefe

~~Clarence~~

Pauline Lunge

Jangiana Phillips

Isaiah Wilderford

Y.K.

Tank Morgan

~~John~~

Luene Allen

Michelle Phillips

BRN

SCHEDULE**PART 1****Some Individuals Who Supported the Wai 692 Claim**

Ruruarau Heitia Hiha

Peggy Nelson

Hine Pene

Fred Reti

Te Maari Joe

Ngahiwi Tomoana

January Roberts

Naresh Colin James

Rose Whenuaroa

Christine Te Kahika

Margie Russell

Jim Pearcey

Janice Wenn

Irihapeti Ramsden

Dr Paparangi Reed

Dr Robyn Gwynn

Professor Whatarangi Winiata

Viv Lawton

Keith Sellars

Colleen Cotter

Raewyn Smith

Matthew Bennett

BK

Kararaina (Caroline) Ratima-Harmer

Des Ratima

Donna Gudgeon

PART 2

Terms of Transfer of Settlement Properties

Interpretation

- 1 In this Part, references to:
 - 1.1 clauses are to clauses in the main body of this Deed (namely, any part of this Deed except the Schedule and the appendix); and
 - 1.2 paragraphs are to paragraphs in this Part of the Schedule.

Application of this Part

- 2 This Part applies to the transfer by the DHB under clause 44 of the settlement properties to Ahuriri District Health.

Disclosure information

- 3 The DHB warrants to Ahuriri District Health that the disclosure information in relation to each settlement property in a letter dated 26 September 2008 from the DHB to Ahuriri District Health was, as at the date the information was provided, all the material information that relates to the settlement property of which the DHB was aware.
- 4 Except as provided in paragraph 3, the DHB gives no representation or warranty, whether express or implied, and does not accept any responsibility, with respect to either settlement property.

Transfer and possession on settlement

- 5 On the settlement date:
 - 5.1 the DHB must:
 - 5.1.1 transfer the fee simple estate in each settlement property to Ahuriri District Health subject to and, where applicable, with the benefit of:
 - (a) the encumbrances disclosed in the relevant letter referred to in paragraph 3 (the “**disclosed encumbrances**”), as they may be varied under paragraph 13.1; and

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(b) any additional encumbrances under paragraph 13.2;

5.1.2 provide Ahuriri District Health with the following documents in relation to each settlement property:

(a) a registrable transfer instrument; and

(b) any contracts and other documents that:

(i) create unregistered rights, interests, and obligations affecting the registered proprietor's interest (but not if contained in public documents); and

(ii) continue after the settlement date; and

5.1.3 provide Ahuriri District Health with the keys to exterior doors, and any electronic door openers and security codes to alarms, to or for the settlement property that are in the possession of the DHB; and

5.1.4 transfer the DHB settlement property to Ahuriri District Health without payment;

5.2 Ahuriri District Health must pay to the DHB, by way of bank cheque drawn on a New Zealand registered bank or by another payment method agreed by Ahuriri District Health and the DHB, the purchase price payable for the Crown-funded settlement property under clause 48.3, plus GST if any; and

5.3 vacant possession must be given and taken of each settlement property, subject to:

5.3.1 the disclosed encumbrances in relation to the property (as they may be varied under paragraph 13.1); and

5.3.2 any additional encumbrance under paragraph 13.2.

Outgoings and incomings to be apportioned on settlement

6 The DHB must, before the settlement date, provide Ahuriri District Health with a statement calculating the amount payable by Ahuriri District Health or the DHB, as the case may be, under paragraph 7.

7 On the settlement date:

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- 7.1 Ahuriri District Health must pay the DHB the amount by which the outgoings (except for insurance premiums) pre-paid by the DHB for either settlement property for a period after the settlement date, exceed the incomings received by the DHB for either settlement property for that period; or
- 7.2 the DHB must pay Ahuriri District Health the amount by which the incomings received by the DHB for either settlement property for a period after the settlement date, exceed the outgoings (except for insurance premiums) for either settlement property pre-paid by the DHB for that period.
- 8 Ahuriri District Health is not required to take over from the DHB any insurance contract in relation to a settlement property.

Fixtures, fittings and chattels

- 9 Each settlement property is to be transferred to Ahuriri District Health with all fixtures and fittings that, on the date of this Deed, are situated on the property and owned by the DHB.
- 10 Fixtures and fittings transferred under paragraph 9 are to be free of any mortgage or charge.
- 11 Chattels situated on a settlement property are not included in its transfer except for any stove, television aerial, fixed floor coverings, blinds, curtains, drapes and light fittings situated on the settlement property on settlement date.
- 12 Any issue as to the ownership of, or liability for, fixtures or fittings not owned by the DHB, or chattels situated on a settlement property, must be resolved between Ahuriri District Health and the person concerned (without reference to the DHB).

Rights and obligations before settlement

- 13 The DHB may, before the settlement date, with Ahuriri District Health's prior written consent (which must not be unreasonably withheld or delayed):
- 13.1 vary a disclosed encumbrance: or
- 13.2 enter into an encumbrance affecting or benefiting a settlement property.

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- 14 Before the settlement date, the DHB must:
- 14.1 ensure each settlement property is maintained in substantially the same condition as the property was in at the date of this Deed, fair wear and tear excepted; and
 - 14.2 obtain the prior consent of Ahuriri District Health (which must not be unreasonably withheld or delayed) before procuring a consent, or providing a waiver, under the Resource Management Act 1991, or other legislation, that materially affects a settlement property; and
 - 14.3 if the DHB carries out works, or authorises in writing works to be carried out, on a settlement property, comply with the obligations imposed on the DHB under the Building Act 2004 in respect of such works.
- 15 The DHB must pay the charges for electricity, gas, water, and other utilities that it owes as owner of a settlement property until the settlement date, except where the charges are payable by a tenant or occupant to the supplier.
- 16 Subject to the terms of any disclosed encumbrance in relation to a settlement property, the DHB must use reasonable endeavours to obtain permission for Ahuriri District Health to enter and inspect each settlement property on one occasion before the settlement date.
- 17 Ahuriri District Health must comply with all reasonable conditions imposed by the DHB in relation to it entering and inspecting a settlement property under paragraph 16.

Obligations after settlement

- 18 If, after the settlement date, the DHB receives a notice or demand in relation to a settlement property from the Crown, a territorial authority, or a tenant, it must, if it does not pay or comply with it, promptly deliver it to Ahuriri District Health or its solicitors.
- 19 Immediately after the settlement date, the DHB must give notice of the transfer of the settlement properties to the territorial authority that has jurisdiction in respect of them.

Risk and insurance

- 20 Each settlement property is at the sole risk of:

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20.1 the DHB until the settlement date; and,

20.2 Ahuriri District Health from the settlement date.

Damage and destruction

21 Paragraphs 21 to 24 apply if, before the settlement date:

21.1 a settlement property is destroyed or damaged; and

21.2 the destruction or damage has not been made good.

22 If, despite the destruction or damage, the settlement property is tenable, Ahuriri District Health must complete the transfer on the condition that the DHB pay to it the amount by which the value of the settlement property has diminished as at the settlement date as a result of the destruction or damage.

23 If, as a result of the destruction or damage, the settlement property is untenable:

23.1 Ahuriri District Health may cancel the transfer by notice in writing to the DHB; or

23.2 if Ahuriri District Health does not cancel the transfer, it must complete the transfer on the condition that the DHB pay to it, the amount by which the value of the settlement property has diminished as at the settlement date as a result of the destruction or damage; and

23.3 if Ahuriri District Health cancels the transfer:

23.3.1 clause 50 will apply to the damaged or destroyed settlement property;

23.3.2 clauses 51 to 55 will apply and, in particular, the DHB and Ahuriri District Health must use their best endeavours to agree in writing a replacement property; and

23.3.3 the settlement date will not be capable of determination under clause 61 until after a replacement property is determined under clauses 51 to 55.

24 Ahuriri District Health or the DHB may give the other notice:

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24.1 requiring a dispute as to the application of paragraphs 22 and 23 be determined by an arbitrator to be appointed by the President of the New Zealand Law Society; and

24.2 after the appointment of the arbitrator, referring the dispute to him or her for determination under the Arbitration Act 1996.

Boundaries and title

25 The DHB is not required to point out the boundaries of a settlement property to Ahuriri District Health.

26 If a settlement property is subject only to the disclosed encumbrances (as they may be varied under paragraph 13.1) and any additional encumbrance under paragraph 13.2, Ahuriri District Health:

26.1 will be treated as having accepted the DHB's title to the property as at the settlement date; and

26.2 may not make any objections to, or requisitions on, it.

27 Any error, omission, or misdescription of a settlement property or its title does not annul its transfer.

Further assurances

28 The DHB and Ahuriri District Health must, at the request of the other, sign and deliver any further documents or assurances, and do all acts and things, that the other may reasonably require to give full force and effect to this part.

Non-merger

29 On transfer of a settlement property to Ahuriri District Health:

29.1 the provisions of this part will not merge; and

29.2 to the extent any provision of this part has not been fulfilled, it will remain in force.

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PART 3
Indicative Terms of Rongoa Contract



«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»
 Provider No. / Contract No.

**Agreement
 between**

**HER MAJESTY THE QUEEN IN RIGHT OF HER
 GOVERNMENT IN NEW ZEALAND
 (acting by and through the Ministry of Health)**



MANATŪ HAUORA

650 Great South Road
 Private Bag 92-522
 Auckland
 Ph: 09-580 9000
 Fax: 09-580 9001

354 Victoria Street
 PO Box 1031
 Hamilton
 Ph: 07-858 7000
 Fax: 07-858 7001

No 1 The Terrace
 PO Box 6013
 Wellington
 Ph: 04-495 4400
 Fax: 04-495 4401

250 Oxford Terrace
 PO Box 3877
 Christchurch
 Ph: 03-372 1000
 Fax: 03-372 1015

229 Moray Place
 PO Box 5849
 Dunedin
 Ph: 03-474 8040
 Fax: 03-474 8582

Contact:

«CONTRACTDEPUTY_NAME»

and

«PROVIDER_NAME»

«CONTRACT_DESCRIPTION»

«PROVIDER_ADDRESS»
 «PROVIDER_ADDRESS2»
 «PROVIDER_CITY»
 Ph: «PROVIDER_PHONE»
 Fax: «PROVIDER_FAX»

Contact:

«PRVDRCONTACT_NAME»

BR

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» «CONTRACT_VERSION»

CONTENTS OF THIS AGREEMENT

PART 1 HEAD AGREEMENT

Section A Summary

PART 2 GENERAL TERMS

Section B Standard Conditions of Contract (SCC)

Section C Provider Quality Specifications (PQS)

Section D Standard Information Specifications (SIS)

PART 3 SERVICE SCHEDULES

Section E Provider Specific Terms and Conditions

Section F Service Specification

15/1

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» «CONTRACT_VERSION»

A: SUMMARY

A1 Agreement to Purchase and Provide Services

- A1.1 We agree to purchase and you agree to provide services on the terms and conditions set out in the Agreement.
- A1.2 The Agreement means all documents included in Part 1 (this document, to be referred to as the Head Agreement), together with Parts 2 and 3 (the documents listed in the Agreement Summary below).
- A1.3 The Agreement sets out the entire agreement and understanding between us and supersedes all prior oral or written agreements or arrangements relating to its subject matter.

A2 Duration of the Agreement, and Components of the Agreement

- A2.1 Part 2 (the General Terms) will apply for the period specified in the Agreement Summary below, or until terminated in accordance with the Agreement, subject to any rights to review, extend, vary or terminate any of these documents in accordance with the terms of this Agreement.
- A2.2 Each Service Schedule will apply for the period specified in Part 3, and shown in the Agreement Summary below, subject to any rights to review, extend, vary or terminate any of these documents in accordance with the terms of this Agreement.
- A2.3 The Agreement will automatically terminate upon the expiry of all Service Schedules in Part 3. Notwithstanding any end date given in Part 2 (the General Terms) the terms and conditions of Part 2, including the right to terminate the Agreement of any part of the Agreement, Part 2 (the General Terms) will be deemed to continue as long as there is one or more active Service Schedule in Part 3.

A3 Relative Priorities of the Component Parts of the Agreement

- A3.1 In the event of any conflict between the terms of the Provider Specific Terms and Conditions within Part 3 (Service Schedules) and any other part of the Agreement, the terms of the Provider Specific Terms and Conditions within Part 3 (Service Schedules) will have priority.
- A3.2 In the event of any conflict between the terms of Part 2 (the General Terms) and Part 3 (the Service Schedules), the terms of the Service Schedules will have priority.

- A3.3 In the event of any conflict between the terms of Section B (the Standard Conditions of Contract) and Section E (the Provider Type Terms and Conditions), the terms of Section E (the Provider Type Terms and Conditions) will have priority.

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

A4 Enforceability of the Agreement, and its Component Parts

- A4.1** If any provision in any of the documents listed in the Agreement Summary below is lawfully held to be illegal, unenforceable or invalid, the determination will not affect the remainder of the relevant document or the Agreement, which will remain in force.
- A4.2** If an entire document listed in the Agreement Summary below is lawfully held to be illegal, unenforceable or invalid, the determination will not affect any other documents listed in the summary or the Agreement, which will remain in force.
- A4.3** If any provision in any of the documents or an entire document listed in the Agreement Summary below is held to be illegal, unenforceable or invalid, then we agree to take such steps or make such modifications to the provision or document as are necessary to ensure that it is made legal, enforceable or valid. This is in addition to and not in substitution of our rights to give notice of the terms and conditions on which we will make payments to you pursuant to section 51 of the Health and Disability Services Act 1993 or otherwise.
- A4.4** The above provisions with respect to illegality, unenforceability or invalidity are not to affect any rights validly to terminate any of the documents in the above schedule or the Agreement as a whole in accordance with the terms of the Agreement or otherwise.

A5 Agreement Summary

- A5.1** This section lists all documents included in The Agreement. The Agreement comes into effect from the commencement date identified in Part 1 below. This summary will be updated, by a contract variation, whenever there is a change to this list.

A6 Part 1 – The Head Agreement

Document	Commencement Date
This document	«CONTRACT_STARTDATE»

A7 Part 2 – The General Terms

Document	Document Version No.	Commencement Date	End Date, if specified
Conditions of Contract	1.0	«CONTRACT_STARTDATE»	«CONTRACT_ENDDATE»
Provider Quality Specifications	1.0	«CONTRACT_STARTDATE»	«CONTRACT_ENDDATE»
Standard Information Specifications	1.0	«CONTRACT_STARTDATE»	«CONTRACT_ENDDATE»
Provider Type Terms and Conditions	1.0	«CONTRACT_STARTDATE»	«CONTRACT_ENDDATE»

A8 Part 3 - The Service Schedules

Service Schedule(s)	Reference/Version No.	Commencement Date	End date

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

A9 Signatures

Please confirm your acceptance of the Agreement by signing where indicated below.

For HER MAJESTY THE QUEEN in Right Of
Her Government in New Zealand (acting by
and through the Ministry of Health)

For «PROVIDER_NAME»:

(signature)	(signature)
Name:	Name:
Position:	Position:
Date:	Date:

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

PART 2: GENERAL TERMS

- 2.01 This Part 2 contains all of the parts of the Head Contract, as listed in the Contract Agreement (Agreement Summary).
- 2.02 Each of the documents in Part 2 (the Head Contract) form part of the Agreement between us, as defined in the Contract Agreement or in a subsequent Variation to the Contract Agreement, as applicable.
- 2.03 Section B -the Standard Conditions of Contract set out the conditions on which our relationship with all our providers is based.
- 2.04 Section C -the Provider Quality Specification (PQS) sets out the minimum quality of service required of all our providers. Where appropriate, the PQS also requires providers to meet the Health and Disability Sector Standards. The PQS applies to all Services provided under the Agreement. More detailed and service specific quality requirements are included in the Service Schedules.
- 2.05 Section D -the Standard Information Specifications (SIS) sets out information management principles required of all our providers. The SIS applies to all Services provided under the Agreement. More detailed and service specific information requirements are included in the Service Schedules.

b2

B: STANDARD CONDITIONS OF CONTRACT

INTRODUCTION

B1 Standard Conditions

- B1.1** Any Agreement you enter into with us will be deemed to include the following Standard Conditions.
- B1.2** If however any other terms in the Agreement directly conflict with these Standard Conditions, the other terms will have priority.
- B1.3** There is a glossary at the back of these Standard Conditions setting out definitions, interpretations and terms used.

B2 Māori Health

An overarching aim of the health and disability sector is the improvement of Māori health outcomes and the reduction of Māori health inequalities. You must comply with any:

- (a) Māori specific service requirements;
- (b) Māori specific quality requirements; and
- (c) Māori specific monitoring requirements

contained in any Service Schedules to this Agreement

B3 Relationship Principles

- B3.1** The following values will guide us in all our dealings with each other under the Agreement:
- a) Integrity – we will act towards each other honestly and in good faith.
 - b) Good communication – we will listen, talk and engage with each other openly and promptly including clear and timely written communication.
 - c) Enablement – we will seek to enable each other to meet our respective objectives and commitments to achieve positive outcomes for communities and consumers of health and disability services.
 - d) Trust and co-operation – we will work in a co-operative and constructive manner recognising each other's viewpoints and respecting each other's differences.
 - e) Accountability – we will each recognise the accountabilities that each of us have to our respective and mutual clients and stakeholders.

621

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

- f) Innovation – we will encourage new approaches and creative solutions to achieve positive outcomes for communities and consumers of health and disability services.
- g) Quality improvement – we will work co-operatively with each other to achieve quality health and disability services with positive outcomes for consumers.

B4 Reserved

SERVICE PROVISION

B5 Provision of Services

B5.1 You must provide the Services and conduct your practice or business:

- a) In a prompt, efficient, professional and ethical manner, and
- b) In accordance with all relevant published Strategies issued under the Act; and
- c) In accordance with Our obligations, and
- d) In accordance with all relevant Law; and
- e) from the Commencement Date and then without interruption until the Agreement ends or is ended in accordance with the Agreement.

B5.2 Nothing in the Agreement gives you an exclusive right to provide the Services.

B6 Payments

B6.1

- a) We will pay you in accordance with the terms of the Agreement.
- b) We will pay you default interest on any payments due to you under the Agreement and in arrears for more than 14 days.
- c) You must first have given us an invoice completed in the format required and we must have received it 14 working days before it is due.
- d) "Default interest" means interest at the base rate of our bankers calculated from the due date for payment to the date of actual payment, plus the rate of 2 per cent per annum.
- e) This clause does not apply to payments due to you in respect of which we have exercised our right of set off (see clause B6.2).

B6.2 In that case payments may be withheld from the date of non-compliance until such time compliance occurs.

B7 Cost and Volume Shifting

B7.1 You must not:

1521

«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION» «PROVIDER_NAME»

- f) Innovation – we will encourage new approaches and creative solutions to achieve positive outcomes for communities and consumers of health and disability services.
- g) Quality improvement – we will work co-operatively with each other to achieve quality health and disability services with positive outcomes for consumers.

B4 Reserved

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- c) in accordance with Our obligations, and
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- e) from the Commencement Date and then without interruption until the Agreement ends or is ended in accordance with the Agreement.

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- e) This clause does not apply to payments due to you in respect of which we have exercised our right of set off (see clause B6.2).

B6.2 In that case payments may be withheld from the date of non-compliance until such time compliance occurs.

B7 Cost and Volume Shifting

B7.1 You must not:

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTOR» / «CONTRACT_VERSION»

- a) act in such a way that increases cost to another provider,
- b) be party to any arrangement which results in our effectively having to pay more than once for the supply of the same Services or any component of them,
- c) act in such a way that shifts volumes relating to Services being provided separately by you where such volumes have been specifically related to that Service.

B8 Responsibility for Others

- B8.1 You will be responsible for all acts and omissions of your employees, agents and subcontractors even if they are done without your knowledge or approval.

B9 Other Arrangements

- B9.1 You must not enter into any other contract or arrangement which might prejudice your ability to meet your obligations in the Agreement/
- B9.2 You may (subject to your obligations in the Agreement), agree to provide Services for any other person.

B10 Subcontracting

- B10.1 You may not subcontract any of the Services or part of them without our prior written consent which may not be unreasonably withheld.
- B10.2 If we give consent you must comply with any reasonable conditions we impose as part of the consent.

B11 Transfer of your Rights and Obligations

- B11.1 You must not transfer any part of your rights or obligations under the Agreement without our prior written consent.

QUALITY ASSURANCE

B12 Quality of Services

- B12.1 You must comply with the quality requirements set out in the Agreement.

B13 Information and Reports

- B13.1 You must comply with the information requirements set out in the Agreement.
- B13.2 You must keep and preserve Records and protect the security of them and make them available to us in accordance with our reasonable instructions.
- B13.3 You must take all due care to ensure that in the event of your ceasing to provide the Services, the Records are properly preserved and transferred to us.

B1

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

B13.4 You must keep proper business records and promptly complete a balance sheet, statement of income and expenditure and cashflows in accordance with accepted accountancy principles at the end of each financial year.

B13.5 We may use any information concerning you:

- a) for our own purposes; and
- b) for any purposes required by any Minister of the Crown or any Governmental Body.

B13.6 You must report to us in accordance with our reasonable instructions.

B13.7 We may reasonably require you to send reports direct to any Minister of the Crown or any Governmental Body within a time reasonably fixed by us.

B14 Appointment of Auditors

B14.1 We may appoint people to Audit, on our behalf, in relation to any of the matters contained in the Agreement.

B14.2 We will give you prior written notice of the names of the people we have appointed.

B14.3 Both of us must agree to the people we have appointed. You may not refuse where any or all of those people are suitably qualified and have no demonstrable conflict of interest, but your refusal may be based on some other good reason.

B14.4 Those people may take copies of any parts of the Records.

B15 Access for Audit

B15.1 You and your sub-contractors must co-operate with us fully and allow us or our authorised agents, access to:

- a) your premises,
- b) all premises where your Records are kept,
- c) service users and their families,
- d) staff, sub-contractors or other personnel used by you in providing the Services,

For the purposes of and during the course of carrying out any Audit.

B15.2 We will ensure that our exercise of access under this clause B15 will not unreasonably disrupt the provision of the Services to Service Users.

B15.3 Notice of Audit

- a) we will give you prior notice of any Audit as agreed in any Audit protocols.
- b) If we believe that delay will unnecessarily prejudice the interests of any person, we may give you notice of our intention to carry out an Audit within 24 hours.

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«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

B15.4 Times for Audit

- a) Subject to Clause B15.3b an Audit may be carried out at any time during working hours and at any other reasonable times.
- b) You must ensure that the people appointed by us to carry out the Audit have access, during the hours they are entitled to Audit.

B16 Audit Process

B16.1 Subject to clause B23, in carrying out any Audit we may:

- a) Access confidential information about any Service User; and
- b) Observe the provision or delivery of the Services; and
- c) Interview or follow up Service Users and/or their families; and
- d) Interview or follow up any staff, sub-contractors or other personnel used by you in providing the Services.

B17 Financial Audit

B17.1 Despite the other provisions in this section B12 (Quality Assurance) we may not inspect your accounting system or record of your costs of providing the Services.

- a) We may, however, appoint as set out in the Agreement, an independent auditor to Audit:
 - i. The correctness of the information you give us; and
 - ii. Your calculations of the cost of supplying the Services; and
 - iii. Your financial position.
- b) The auditor:
 - i. Must not disclose specific details of your financial position to us; but
 - ii. May advise us if he or she considers your financial position may prejudice your ability to carry out your obligations under the Agreement.

B17.2 We retain the right to Audit under this Section B12 (Quality Assurance) after the Agreement ends but only to the extent that it is relevant to the period during which the Agreement exists.

B18 Insurance

- B18.1** You must immediately take out adequate comprehensive insurance throughout the term of the agreement covering your practice or business.
- B18.2** You must make sure that all the insurance cover always remains in force for the term of the Agreement or so long thereafter as required for the purposes of the Agreement.

101

«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

B19 Indemnity

B19.1 You must indemnify us against all claims, damages, penalties or losses (including costs) which we incur as the result of:

- a) Your failing to comply with your obligations in the Agreement; or
- b) Any act or omission by you or any person for whom you are responsible.

B20 Complaints

B20.1 You must comply with any standards for the Health sector relating to complaints

B20.2 If there is no such standard applicable to you, then you must implement a complaints procedure in accordance with the terms of the Agreement.

B21 Complaints Body

B21.1 You must at all reasonable times co-operate with any Complaints Body and comply with its reasonable requirements.

B21.2 We will advise a Complaints Body of any complaints we receive about you if we believe it is appropriate to do so.

B21.3 We will give you reasonable assistance when we can in respect of any complaints made to the Privacy Commissioner which involve both of us.

B22 Warranties

B22.1 You warrant to us that:

- a) All material information given to us by you or on your behalf is correct; and
- b) You are not aware of anything which might prevent you from carrying out your obligations under the Agreement.

B22.2

- a) The above warranties will be deemed to be repeated on a daily basis from the date of the Agreement and,
- b) You must advise us immediately if at any time either of the warranties is untrue.

B23 Limitation of our Rights

B23.1 Our rights and the rights of others to:

- a) Access confidential information about any Service User; and
- b) Observe the provisions or delivery of the Services; and
- c) Interview or follow up Service Users and/or their families,

16/12/1

«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION» «PROVIDER_NAME»

Must be either authorised by statute or by a code of practice under the Privacy Act 1993 covering health information held by health agencies or by the informed consent of each Service User concerned. The consents will normally be in writing.

DEALING WITH PROBLEMS

B24 Notification of Problems

B24.1 You must advise us promptly in writing:

- a) Of any:
 - i. changes,
 - ii. problems,
 - iii. significant risks,
 - iv. significant issues,

which materially reduce or affect your ability to provide the Services, or are most likely to do so, including those relating to:

- v. any premises used by you,
- vi. any equipment you are using,
- vii. your key personnel; or
- b) if you materially fail to comply with any of your obligations in the Agreement; or
- c) of any serious complaints or disputes which directly or indirectly relate to the provision of the Services; or
- d) of any issues concerning the Services that might have high media or public interest.

B24.2 We must discuss with each other possible ways of remedying the matters notified. Our discussion or attempted discussions will not however limit any of our rights under the Agreement.

B24.3 You must have in place realistic and reasonable risk management processes and contingency plans to enable you to continue to provide the Services on the occurrence of any of the matters in this clause B24.

B25 Uncontrollable Events

B25.1

- a) For the purposes of this Clause B25 an "uncontrollable event" is an event which is beyond the reasonable control of us ("the person claiming"), or an event as set out in Clause B29.4.
- b) An uncontrollable event does not include:

BRG

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» «CONTRACT_VERSION»

- i. any risks or event which the person claiming could have prevented or overcome by taking reasonable care including having in place a realistic and reasonable risk management process; or
- ii. a lack of funds for any reason.

B25.2 The person claiming will not be in default under the terms of the Agreement if the default is caused by an uncontrollable event.

B25.3 The person claiming must:

- a) promptly give written notice to the other specifying:
 - i. the cause and extent of that person's inability to perform any of the person's obligations; and
 - ii. the likely duration of the non-performance;
- b) in the meantime take all reasonable steps to remedy or reduce the uncontrollable event.

B25.4 Neither of us is obliged to settle any strike, lock out or other industrial disturbance.

B25.5 Performance of any obligation affected by an uncontrollable event must be resumed as soon as reasonably possible after the uncontrollable event ends or its impact is reduced.

B25.6 If you are unable to provide the Services as the result of an uncontrollable event we may make alternative arrangements suitable to us for the supply of the Services during the period that you are unable to supply them after we consult with you.

B25.7 If either of us is unable to perform an obligation under the Agreement for 90 days because of an uncontrollable event, both of us must first Consult and decide to what extent if any the Agreement can be varied and to continue.

B25.8 If we cannot agree that the Agreement may continue, then either of us may cancel the Agreement after giving at least 14 days prior written notice.

B25.9 Clause B34.1 will apply to cancellation of the Agreement under this clause.

B26 We May Remedy Your Failure To Meet Your Obligations

B26.1 If you fail to carry out any of your obligations in the Agreement we may do so on your behalf at your expense and risk.

B26.2 We may do this without giving you notice where the circumstances reasonably require such action. Otherwise, we will give you 7 days notice in writing of our intention to act.

B26.3 All costs we incur in doing so, must be paid by you to us on demand or we may deduct them from moneys which we owe you.

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«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» «CONTRACT_VERSION»

B27 Public Statements, Issues and Advertising

B27.1

- a) Neither of us may directly or indirectly criticise the other publicly, without first fully discussing the matters of concern with the other.
- b) The discussion must be carried out in good faith and in a co-operative and constructive manner.
- c) Nothing in this clause prevents you from discussing any matters of concern with your people being your staff, subcontractors, agents or advisors.
- d) Nothing in this clause prevents you from discussing any matters of concern with our people being our staff, subcontractors, agents, advisors or persons to whom we are responsible.
- e) If we are unable to resolve any differences then those differences may be referred by either of us to the Dispute Resolution process set out in clause B28.

B27.2 You may use our name or logo only with our prior written consent.

B27.3 The provisions of this clause B27 will remain in force after the Agreement ends.

B28 Dispute Resolution

B28.1 If either of us has any dispute with the other in connection with the Agreement, then:

- a) Both of us will use our best endeavours to settle the dispute or difference by agreement between us. Both of us must always act in good faith and co-operate with each other to resolve any disputes, and
- b) If the dispute or difference is not settled by agreement between us within 30 days, then, unless both of us agree otherwise:
 - i. full written particulars of the dispute must be promptly given to the other.
 - ii. The matter will be referred to mediation in accordance with the Health Sector Mediation and Arbitration Rules 1993 as amended or substituted from time to time. A copy of the Rules are available from the Ministry of Health.
- c) neither of us will initiate any litigation during the dispute resolution process outlined in paragraph b) above, unless proceedings are necessary for preserving the party's rights.
- d) both of us will continue to comply with all our obligations in the Agreement until the dispute is resolved by payments may be withheld to the extent that they are disputed.

B28.2 Clause B28.1 will not, however, apply to any dispute:

- a) concerning any renegotiation of any part of the Agreement,
- b) as to whether or not any person is an Eligible Person,

15/11

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»«CONTRACT_VERSION»

- c) directly or indirectly arising from any matter which has been referred to a Complaints Body unless the Complaints Body directs the matter to be resolved in accordance with clause B28.1.

B29 Variations to the Agreement

B29.1 The Agreement may be varied by written agreement signed by both of us.

B29.2 Where the Agreement is for a term exceeding 1 year, we both agree that the Agreement shall be reviewed annually.

B29.3 Variation on requirement by Crown

- a) We may require you to vary the Agreement by written notice to you to comply with any requirement imposed on us by the Crown.
- b) We will give you as much notice of the requirement and details of the proposed change as possible, to the extent that we are able to do so.
- c) Both of us must Consult and decide to what extent if any the Agreement can be varied and the continue on that basis.
- d) If we cannot agree within 60 days, then either of us may cancel the Agreement after giving at least 30 days prior written notice.
- e) You must continue to comply with your obligations under the existing Agreement until any variation of it takes effect.

B29.4 The Agreement will be varied in the event of a disaster, local or national epidemic, emergency or war in accordance with our requirements but this clause is subject to clause B25.

B30 Our Liability

B30.1 Except to the extent that we agree otherwise, we will not be liable to you for any claims, damages, penalties or losses (including costs) which you incur.

ENDING THE AGREEMENT

B31 Notice of Your Future Intentions

B31.1 Before the end of the Agreement you must give a minimum of 3 months notice if:

- a) you do not wish to enter into a new agreement with us when the Agreement ends; or
- b) you wish to enter into a new agreement with us when the Agreement ends but on materially different terms.

This clause does not mean we must enter into a contract with you when the Agreement ends.

B31.2 You must discuss with us your intentions before giving any notice under clause B31.1.

BRE

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

B31.3 We must give you a minimum of 3 months notice if we do not intend to renew the Agreement, except where Management of Change Protocols may apply.

B32 Your Default and our Right to End the Agreement

B32.1 We may end the Agreement immediately by written notice to you on the occurrence of any of the following events:

- a) We have good reason to believe you are unable or will soon become unable to carry out all your material obligations under the Agreement.
 - i. We must, however, consult with you before ending the Agreement for this reason.
 - ii. If we believe the health or safety of any person or Population Served is at risk we may suspend your provision of the Services while we consult.
- b) You have failed to carry out any of your obligations in the Agreement; and
 - i. the failure is material; and
 - ii. it cannot be remedied
- c) if:
 - i. you are or adjudged bankrupt; or
 - ii. you are more than one person, if any of you are adjudged bankrupt; or
 - iii. you are a company and you are placed in receivership or liquidation.
- d) You have failed to carry out any of your obligations in the Agreement and the failure can be remedied by you but you fail to do so within 30 days of your receiving written notice of the default from us.
- e) After 30 days from your receiving the notice, so long as the obligation still has not been met, we may instead of ending the Agreement:
 - i. At any time vary or withdraw from coverage by this Agreement any of the Services in respect of which you have not met your obligation, either straight away or at any later date, and
 - ii. Cease payment for any of the services from the date of withdrawal.
- f) You have the same right and must follow the same procedure if we have not met any obligation and you wish to vary or withdraw any of the Services.
- g) Any dispute regarding the withdrawal or variation of any of the Services under this paragraph d) must be resolved under clause B28.

B32.2 Nothing in clause B32.1 affects any other rights we may have against you in law or in equity.

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«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

B33 Our Default and your Right to End the Agreement

B33.1 If we default on any payments which we are not entitled by the Agreement to withhold and we fail to remedy the default within 20 days of your giving us written notice of the default you may do any one of more of the following:

- a) Cancel the agreement,
- b) Seek specific performance of the Agreement,
- c) Seek damages from us,
- d) Seek penalty interest.

B34 Effect of Ending the Agreement

B34.1 Any cancellation of the Agreement will not affect:

- a) the rights or obligations of either of us which have arisen before the Agreements ends; or
- b) the operation of any clauses in the Agreement which are expressed or implied to have effect after it ends.

GENERAL

B35 Confidentiality

B35.1

- a) Except to the extent that these Standard Conditions provide otherwise, neither of us may disclose any Confidential Information to any other person.
- b) Both of us acknowledge that the Agreement, but not any Confidential Information, may be published publicly by us through any media including electronically via the Internet.

B35.2 Neither of us will disclose to any third party information which will identify any natural person (as defined in the Privacy Act 1993);

- a) without that person's informed consent; or
- b) unless authorised by statute, or by a Code of Practice under the Privacy Act 1993 covering Health Information held by Health Agencies.

B35.3. Clause B35.1 does not apply:

- a) to terms or information which are or become generally available to the public except as the result of a breach of clause B35.1; or
- b) to information which either party is required by law to supply to any person but only to the extent that the law required; or

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«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

- c) to terms or information disclosed to the professional advisers of either of us or to those involved in a Service User's clinical or care management where disclosure is reasonably necessary for the management; or
- d) to information which you are required by the Agreement to disclose or forward to any person.

B35.4 Nothing in clause B35.1 will prevent us from disclosing any terms or information in accordance with any Funding Agreement, or by direction or requirement from the Minister under the Act.

B35.5 Each of us will ensure all Confidential Information is kept secure and is subject to appropriate security and user authorisation procedures and audits.

B36 Governing Law

B36.1 The Agreement is governed by New Zealand law.

B37 Contracts (Privity) Act 1982

B37.1 No other third party may enforce any of the provisions in the Agreement.

B38 Waiver

B38.1 Any waiver by either of us must be in writing duly signed. Each waiver may be relied on for the specific purpose for which it is given.

B38.2 A failure of either one of us to exercise, or a delay by either one of us in exercising, any right given to it under the Agreement, does not mean that the right has been waived.

B39 Entire Agreement

B39.1 Each of us agree that the Agreement sets forth the entire agreement and understanding between both of us and supersedes all prior oral or written agreements or arrangements relating to its subject matter.

B40 Notices

B40.1 Any notice must be in writing and may be served personally or sent by security or registered mail or by facsimile transmission. All notices are to have endorsed on them the contract reference number given to the Agreement.

B40.2 Notices given:

- a) personally are served upon delivery;
- b) by post (other than airmail) are served three days after posting;
- c) by airmail are served two days after posting;
- d) by facsimile are served upon receipt of the correct answer back or receipt code.

B40.3 A notice may be given by an authorised officer, employee or agent of the party giving the notice.

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

B40.4 The address and facsimile number for each of us shall be as specified in the Agreement or such other address or number as is from time to time notified in writing to the other party.

B41 Relationship of Both of Us

B41.1 Nothing in the Agreement constitutes a partnership or joint venture between both of us or makes you an employee, agent or trustee of ourselves.

B42 Signing the Agreement

B42.1

- a) You must satisfy us that the Agreement has been properly signed by you and is a valid and enforceable agreement before we have any obligations to you under the Agreement.
- b) We may however waive all or part of this provision with or without conditions by us.

B42.2 If the condition in clause B42.1 is not satisfied or waived by the Commencement Date or any later date we may void the Agreement by written notice to you.

B43 Partial Invalidity

- a) If any provision in the Agreement is lawfully illegal, unenforceable or invalid, the determination will not affect the remainder of the Agreement which will remain in force.
- b) This clause does not affect any right of cancellation we may have in the Agreement.

GLOSSARY

B44 Definitions

B44.1 In the Agreement Terms given a meaning in the Glossary have that meaning where the context permits.

B44.2 In the Agreement

- a) "We", "us" and "our" means the Ministry of Health including its permitted consultants, subcontractors, agents, employees and assignees (as the context permits).
- b) "You" and "your" means the Provider named in this contract, including its permitted subcontractors, agents, employees and assignees (as the context permits).
- c) "Both of us", "each of us", "either of us" and "neither of us" refers to the parties.

11

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

B45 Interpretation

B45.1 In the Agreement:

- a) A reference to a person includes any other entity or association recognised by law and the reverse;
- b) Words referring to the singular include the plural and the reverse;
- c) Any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both;
- d) Everything expressed or implied in the Agreement which involves more than one person binds and benefits those people jointly and severally;
- e) Clause headings are for reference purposes only;
- f) A reference to a statute includes:
 - i. all regulations under that statute; and
 - ii. all amendments to that statute; and
 - iii. any statute substituting for it which incorporates any of its provisions.
- g) All periods of time or notice exclude the days on which they are given and include the days on which they expire;
- h) Working Days – anything required by the Agreement to be done on a day which is not a Working Day may be done on the next Working Day.

B46 Glossary Terms

Expression	Meaning
Act	The New Zealand Public Health & Disability Act 2000
Agreement	The agreement or arrangement between both of us for the provision of any Services and each schedule to that agreement or arrangement and these Standard Conditions of Contract
Audit	Audit includes (without limitation) audit, inspection, evaluation or review of: <ul style="list-style-type: none"> a) quality, b) service delivery c) performance requirements, d) organisational quality standards, e) information standards and, f) organisational reporting requirements, g) compliance with any of your obligations in relation to the provision of the Services by you.
Commencement Date	The date the Agreement comes into effect
Complaints Body	Any organisation appointed:

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«PROVIDER_NAME»

«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

	<ul style="list-style-type: none"> a) under the Agreement; or b) by both of us by mutual agreement; or c) by a Health Professional Authority; or d) by law <p>to deal with complaints relating to the Services.</p>
Confidential Information	Any information disclosed either before or during the course of the Agreement, by us to you or vice versa that is agreed by both of us as being confidential and which may not be disclosed (subject to any law to the contrary) but excluding the terms of the Agreement.
Consult	<ul style="list-style-type: none"> a) Each of us must fully state our proposals and views to the other and carefully consider each response to them. b) Each of us must act in good faith and not predetermine any matter. c) Each of us must give the other adequate opportunity to consult any other interested party. <p>The obligation of either of us to Consult will be discharged if the other refuses or fails to Consult.</p>
Crown	The meaning given in the Act.
Eligible Person	<p>Any individual who:</p> <ul style="list-style-type: none"> a) is in need of the Services; and b) meets the essential eligibility criteria and other criteria, terms and conditions which, in accordance with any direction given under Section 32 of the Act or continued by Section 112(1) of the Act, or any other direction from the Minister, or the Funding Agreement, must be satisfied before that individual may receive any Services purchased by us. c) The Ministry of Health will determine if any individual is an Eligible Person if there is any dispute. <p>"Eligible People" has a corresponding meaning.</p>
End Date	The date the Agreement ends or is ended in accordance with the Agreement.
Funding Agreement	The relevant Crown funding agreement within the meaning of Section 10 of the Act, entered into by us.
Governmental Body	Includes any entity lawfully formed by, or in accordance with any direction of, the Crown or any Minister or officer of the Crown.
GST	Goods and Services Tax under the Goods and Services Tax Act 1995.
Ministry of Health	Includes any of its legal successors.
Health Professional Authority	Any authority or body that is empowered under and by virtue of any enactment of law, or the rules of any body or organisation, to exercise disciplinary powers in respect of any person who is involved in the supply of Health or Disability Services, or both.

BRC

«PROVIDER_NAME»

«PROVIDER_NUMBER» / «CONTRACT_CONTRACTOR»/«CONTRACT_VERSION»

Law	Includes: a) Any legislation, decree, judgement, order or by law; and b) Any rule, protocol, code of ethics or practice or conduct and other ethical or other standards, guidelines and c) Requirements of any Health Professional Authority; and d) Any relevant standards of the New Zealand Standards Association; and e) Any future law.
Management of Change Protocols	Such protocols as may be agreed between us relating to the management of change.
Minister	The Minister of Health.
Ministry	The Ministry of Health (by whatever name known) and any other successor department of state and include the Minister of Health and the Director-General of Health and any of his her or their delegates.
Our Objectives	Include: a) The objectives listed in Section 22 of the Act, and b) The objectives specified in our statement of intent (as defined in the Act). c) To meet the directions and requirements notified to us under the Act from time to time.
Person	Includes a corporation, incorporated society or other body corporate, firm, government authority, partnership, trust, joint venture, association, state or agency of a state, department of Ministry of Government and a body or other organisation, in each case whether or not having a separate legal identity.
Population Served	Means communities or targeted populations, including Eligible People, for whom Services are or may be provided.
Records	Means without limitation: a) All relevant written and electronically stored material; and b) Includes all relevant records and information held by you and your employees, subcontractors, agents and advisers.
Services	Health Services, or disability services or both as specified in the Agreement.
Service Users	Users of any of the Services.
Standard Conditions	These Standard Conditions of Contract.
Working Day	Any day on which Registered Banks are open for business in New Zealand, relative to your principal place of business.

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C: PROVIDER QUALITY SPECIFICATIONS

INTRODUCTION

C1 Relationship Principles

C1.1 The following values will guide us in all our dealings with each other under the Agreement:

- a) integrity -we will act towards each other honestly and in good faith.
- b) good communication -we will listen, talk and engage with each other openly and promptly including clear and timely written communication.
- c) enablement -we will seek to enable each other to meet our respective objectives and commitments to achieve positive outcomes for communities and consumers of health and disability services.
- d) trust and co-operation -we will work in a co-operative and constructive manner recognising each other's viewpoints and respecting each other's differences.
- e) accountability -we will each recognise the accountabilities that each of us have to our respective and mutual clients and stakeholder.
- f) innovation -we will encourage new approaches and creative solutions to achieve positive outcomes for communities and consumers of health and disability services.
- g) quality improvement – we will work co-operatively with each other to achieve quality health and disability services with positive outcomes for consumers.

C2 Quality of Service

C2.1 These Provider Quality Specifications define the quality of service which consumers and populations served under the terms of this contract will receive. Provider quality requirements will in final form be described in three key levels.

- a) Health and Disability Sector Standards (H&DS Standards)
- b) Provider Quality Specifications (PQS)
- b) Service Specific Quality Specifications (SSQS)

C3 Health and Disability Sector Standards (H&DS Standards)

C3.1 The Health and Disability Sector Standards (H&DS Standards) have been developed to replace several pieces of previous consumer safety legislation. Compliance with them will

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» «CONTRACT_VERSION»

become mandatory when the Health and Disability Services (Safety) Bill is passed and fully implemented. At that stage compliance with the Standards will replace compliance with the regulations and statutes that apply to hospital in-patient and residential care services. As the standards are implemented the Provider Quality Specifications will be revised to those Standards, and to eliminate repetition.

C4 Provider Quality Specifications (PQS)

- C4.1** All providers are required to meet these Provider Quality Specifications (PQS). The PQS have been developed to ensure a common basis for quality among providers of similar services nationally. They focus on key processes and outcomes. The PQS apply to all services provided under the terms of this Contract.
- C4.2** These PQS include:
- a) specifications for all providers. (Sections C1 – C40 inclusive).
 - b) facility specifications only for providers who offer services to consumers within premises (C41 and C42).
- C4.3** The PQS may be supplemented in contracts by Service Specific Quality Specifications (SSQS) or by specific quality requirements in the Service Specification.

C5 Auditing and Reporting

- C5.1** We may, at any time, audit your service against an H&DS Standard (when implemented) or against a PQS or SSQS by asking you to demonstrate compliance with it. This is part of the Provider Quality Improvement Strategy, which may include regular, random and risk based auditing of services. The PQS and SSQS are not, at present, subject to regular reporting unless required elsewhere in the Agreement or as part of any specified Quality Improvement initiative. You are, however, invited to raise with us at any time any concerns you have about your ability to meet these PQS so corrective processes can be put in place. Please see also Clause C11, C12, C16, C17 and C18 of the Standard Conditions and the Schedule or Templates for Information Requirements.

PROVIDER QUALITY SPECIFICATIONS

C6 PQS Apply to All Services

- C6.1** You will operate all services covered in this Agreement according to these PQS. You will implement these requirements in a manner that is appropriate for your Organisation, taking into account:
- a) requirements of Government Māori Health Policy and Strategies,
 - b) identified needs of consumers, carers and families,
 - c) service goals and objectives,
 - d) parameters of activities,
 - e) management of risks,
 - f) any good practice guidelines endorsed by us and by the Ministry of Health,
 - g) professional standards and codes relevant to your service.

6/12

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

C7 Written Policy, Procedures, Programme, Protocol, Guideline, Information, System or Plan

C7.1 Where, to meet a H&DS Standard or an PQS or SSQS, you need to develop a written policy, procedure, programme, protocol, guideline, information, system or plan etc, you will:

- a) Develop such a document,
- b) Demonstrate systems for reviewing and updating all such documents regularly and as required by current performance or risks,
- c) Demonstrate implementation, through documentation supported as requested through interviews with staff, consumers, and Māori,
- d) Demonstrate that staff are adequately informed of the content and the intent of these written documents,
- e) Provide us with a copy on request.

C8 All Staff Informed

C8.1 You will ensure that:

- a) these PQS are attached to each and every service specification contracted by us and delivered by you,
- b) employees and sub-contractors are aware of your and their responsibilities for these PQS and relevant Service Specifications as they relate to services provided

C9 Requirements for Māori

C9.1 Requirements for Māori are specified here and elsewhere in this Agreement.

C9.2 Your services will meet the diverse needs of Māori, and apply any strategy for Māori Health issued by the Minister.

C10 Māori Participation

C10.1 Māori participation will be integrated at all levels of strategic and service planning, development and implementation within your organisation at governance, management and service delivery levels.

This will include:

- a) consultation with, and involvement of, Māori¹ in your strategic, operational and service processes,
- b) development of a monitoring strategy in partnership with Māori that reviews and evaluates whether Māori needs are being met by your organisation, including:
 - i. removal of barriers to accessing your services;
 - ii. facilitation of the involvement of whanau and others;
 - iii. integration of Māori values and beliefs, and cultural practices;

¹ Reference to "Māori" includes the development of a relationship with local tangata whenua and if appropriate, regional tangata whenua, Māori staff, Māori providers, and Māori community organisations to achieve the required Māori input.

BR1

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»«CONTRACT_VERSION»

- iv. availability of Māori staff to reflect the consumer population
- v. existence, knowledge and use of referral protocols with Māori service providers in your locality.
- c) Education and training of staff in Māori values and beliefs and cultural practices, and in the requirements of any Māori Health Strategy.
- d) Support and development of a Māori workforce

QUALITY MANAGEMENT

You are required to develop, document, implement and evaluate a transparent system for managing and improving the quality of services to achieve the best outcomes for consumers.

C11 Quality Plan

C11.1 You will have a written, implemented and at least annually reviewed Quality Plan designed to improve outcomes for consumers. This plan may be integrated into your business plan. It will describe how you manage the risks associated with the provision of services. The plan will outline a clear quality strategy and will identify the organisational arrangements to implement it. The plan will be of a size and scope appropriate to the size of your service, and will at least include:

- a) an explicit quality philosophy,
- b) clear quality objectives,
- c) commitment to meeting these and any other relevant Quality Specification and Standards, and guidelines for good practice as appropriate,
- d) quality improvement systems,
- e) written and implemented systems for monitoring and auditing compliance with your contractual requirements,
- f) designated organisational and staff responsibilities,
- g) processes for and evidence of consumer input into services and into development of the Quality Plan,
- h) processes for sound financial management,
- i) how you will address Māori issues including recognition of:
 - i. Māori participation with Strategic, Governance, Management and Service Delivery planning, implementation and review functions,
 - ii. Māori as a Government Health Gain priority area,
 - iii. The Pathways set out in any Māori Health Strategy issued by the Minister,
 - iv. Māori specific quality specifications,
 - v. Māori specific monitoring requirements,
 - vi. Māori service specific requirements.

16/2

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»«CONTRACT_VERSION»

C12 Employees Registration, Education and Training

- C12.1 Employees will be, where relevant, registered with the appropriate statutory body, and will hold a current statutory certificate.
- C12.2 Employees will have access to continuing education to support maintenance of professional registration and enhancement of service delivery/clinical practice, and to ensure practice is safe and reflects knowledge of recent developments in service delivery.
- C12.3 Your employment policies and practices will support professional career pathway development for Māori health workers; Māori service advisory positions; Māori change management positions, and the recruitment and retention of Māori employees at all levels of the organisation to reflect the consumer population.

C13 Training and Supervision of Assistants and Volunteers

- C13.1 Assistants, volunteers and other relevant support employees will receive training to enable them to provide services safely, and will work only under the supervision and direction of appropriately qualified staff.

C14 Supervision of Trainees

- C14.1 Trainees will be identified and will provide services only under the supervision and direction of appropriately qualified staff.

C15 Performance Management

- C15.1 You will have in place a system of performance management for all employees.

C16 Clinical Audit

- C16.1 You will have in place clinical audit/peer review processes that incorporate input from relevant health professionals from all services.

C17 Access

- C17.1 All eligible people will have fair, reasonable and timely access to effective services within the terms of this agreement. You will define and apply criteria for providing services, including any priority or eligibility criteria agreed between us. You will manage access to services within available resources and according to those criteria. You will maintain records of people who receive services and those who do not, and the criteria by which these decisions are made.

C18 Service Information

- C18.1 Potential and current consumers, and referrers, will have access to appropriately presented information in order for eligible people to access your services. This information may be in the form of a brochure and will include at least:
- a) the services you offer,
 - b) the location of those services,
 - c) the hours the service is available,
 - d) how to access the service (e.g. whether a referral is required),

BRC

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

- e) consumer rights and responsibilities including copy of H&DC Code of Rights, and Complaints Procedure,
- f) availability of cultural support,
- g) after hours or emergency contact if necessary or appropriate,
- h) any other important information in order for people to access your services.

This information will be presented in a manner appropriate to the communication needs of consumers and communities.

C19 Support for Māori

You will facilitate support from whanau/hapu/iwi; kuia/kaumatua; rongoa practitioners; spiritual advisors; Māori staff and others as appropriate for Māori accessing your service.

ACCEPTABILITY

C20 Consumer Rights

C20.1 Each consumer will receive services in a manner that complies with the Health and Disability Commissioner Act 1994, and with all aspects of the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 (H&DC Code). This will include provision for the:

- a) right to be treated with respect for person, privacy and culture,
- b) freedom from discrimination, coercion, harassment, and exploitation,
- c) right to dignity and independence,
- d) right to services of an appropriate standard including legal, professional, ethical,
- e) right to effective communication,
- f) right to be fully informed,
- g) right to make an informed choice and give informed consent,
- h) right to support person present,
- i) rights in respect of teaching or research,
- j) right to complain.

You will make available and known to consumers and visitors to the service the Code of Health and Disability Services Consumers' Rights. You will ensure staff are familiar with and observe their obligations under this Code.

C21 Confidentiality

C21.1 You will disclose information about consumers to any third party only:

- a) with the person's informed consent or,
- b) in accordance with the Health Information Privacy Code,
- c) to assist in effective service provision and achieving positive outcomes for the consumer.

C22 Cultural Values

C22.1 You will deliver services in a culturally appropriate and competent manner, ensuring that the integrity of each consumer's culture is acknowledged and respected. You will take account of

BRU

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

the particular needs within the community served in order that there are no barriers to access or communication, and that your services are safe for all people. You will include significant local or service specific ethnic and other cultural groups in assessing satisfaction with services.

C22.2 You will incorporate Māori principles/tikanga into your organisation. These may be explained in the following ways:

Wairua	Spirit or spirituality	A recognition that the Māori view of spirituality is inextricably related to the wellbeing of the Māori consumer
Aroha	Compassionate love	The unconditional acceptance which is the heart of care and support
Turangawaewae	A place to stand	The place the person calls home, where their origins are. Must be identified for all Māori consumers
Whanaungatanga	The extended family	Which takes responsibility for its members and must be informed of where its member is
Tapu/Noa	Sacred/profane	The recognition of the cultural means of social control envisaged in tapu and noa including its implications for practices in working with Māori consumers
Mana	Authority, standing	Service must recognise the mana of Māori consumers
Manaaki	To care for and show respect to	Services show respect for Māori values, traditions and aspirations
Kawa	Protocol of the marae, land, hui	Determines how things are done in various circumstances. Respect for kawa is very important. If the kawa is not known the tangata whenua should be consulted.

C23 Consumer Advocates

C23.1 You will inform consumers and staff, in a manner appropriate to their communication needs, of their right to have an advocate, including to support the resolution of any complaint. You will allow advocates reasonable access to facilities, consumers, employees and information to enable them to carry out their role as an advocate. You will know of and be able to facilitate access to a Māori advocate for consumers who require this service.

C24 Consumer/Family/Whanau and Referrer Input

C24.1 You will regularly offer consumers/families/whanau and referrers the opportunity to provide feedback as a means of improving the outcomes for consumers. When you obtain feedback from consumers by means of written surveys, you will comply with the Ministry of Health Guidelines for Consumer Surveys. Consumer input will be reflected in the maintenance and improvement of quality of service, both for the individual consumer and across the service as a whole. You will actively seek feedback from Māori by appropriate methods to improve organisation responsiveness to Māori. When requested you will make available to us the results of such surveys.

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«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

C25 Community Involvement

C25.1 You will have in place and follow active processes for consulting with the local community in matters affecting them such as service location and building programmes.

C26 Complaints Procedure

C26.1 You will enable consumers/families/whanau and other people to make complaints through a written and implemented procedure for the identification and management of Complaints. This procedure will meet the H&DC Code requirements and will also ensure that:

- a) the complaints procedure itself is made known to and easily understandable by consumers,
- b) all parties have the right to be heard,
- c) the person handling the complaint is impartial and acts fairly,
- d) complaints are handled at the level appropriate to the complexity or gravity of the complaint,
- e) any corrective action required following a complaint is undertaken,
- f) it sets out the various complaints bodies to whom complaints may be made and the process for doing so. Consumers will further be advised of their right to direct their complaint to the H&DC Commissioner and any other relevant complaints body, particularly in the event of non-resolution of a complaint,
- g) complaints are handled sensitively with due consideration of cultural or other values,
- h) Māori consumers and their whanau will have access to a Māori advocate to support them during the complaints process,
- i) consumers who complain, or on whose behalf families/whanau complain, shall continue to receive services which meet all contractual requirements,
- j) complaints are regularly monitored by the management of the service and trends identified in order to improve service delivery,
- k) it is consistent with any complaints policy as we may notify from time to time.

C27 Personnel Identification

C27.1 Employees, volunteers, students or sub-contractors undertaking or observing service delivery will identify themselves to all consumers and family/whanau.

C28 Ethical Review

C28.1 If you conduct research and innovative procedures or treatments you will have written and implemented policies and procedures for seeking ethical review and advice from a Health and Disability Ethics Committee in accordance with the current "National Standard for Ethics Committees" (or any replacement publication). You will consult with and receive approval from Māori for any research or innovative procedures or treatments which will impact on Māori.

SAFETY AND EFFICIENCY

C29 General Safety Obligation

C29.1 You will protect consumers, visitors and staff from exposure to avoidable/preventable risk and harm.

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C30 Risk Management

C30.1 You will have in place well developed processes for:

- a) identifying key risks including risks to health and safety,
- b) evaluating and prioritising those risks based on their severity, the effectiveness of any controls you have and the probability of occurrence,
- c) dealing with those risks and where possible reducing them.

C31 Equipment Maintained

C31.1 You will ensure that equipment used is safe and maintained to comply with safety and use standards.

C32 Infection Control/Environmental and Hygiene Management

C32.1 You will safeguard consumers, staff and visitors from infection. You will have written, implemented and regularly reviewed environmental and hygiene management/infection control policies and procedures which minimise the likelihood of adverse health outcomes arising from infection for consumers, staff and visitors. These will meet any relevant profession-specific requirements and the requirements of the Standard Universal Precautions Guidelines. They will include definitions and will clearly outline the responsibilities of all employees, including immediate action, reporting, monitoring, corrective action, and staff training to meet these responsibilities.

C33 Security

C33.1 You will safeguard consumers, employees and visitors from intrusion and associated risks. You will have written, implemented and reviewed policies and practices relating to security to ensure that buildings, equipment and drugs are secure.

C34 Management Of Internal Emergencies and External Disasters

C34.1 You will have written, implemented and reviewed contingency management policies and procedures that minimise the adverse impact of internal emergencies and external or environmental disasters on your consumer, staff and visitors. The policies and procedures will include the processes for working with the organisations who have responsibility for co-ordinating internal and external (environmental) disaster services. These policies and procedures will be linked to your risk management processes.

C35 Incident and Accident Management

C35.1 You will safeguard consumers, staff and visitors from untoward risk arising from avoidable incidents, accidents and hazards. You will have written, implemented and reviewed incident, accident and hazard management policies and procedures which assist in managing safety and risk. These will include definitions of incidents and accidents and will clearly outline the responsibilities of all employees, including:

- a) taking immediate action,
- b) reporting, monitoring and corrective action to minimise incidents, accidents and hazards, and improve safety,
- c) debriefing and staff support as necessary.

BRC

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

C36 Prevention of Abuse and/or Neglect

- C36.1 You will safeguard consumers, staff and visitors from abuse, including physical, mental, emotional, financial and sexual maltreatment or neglect. You will have written, implemented and reviewed policy and procedures on preventing, detecting and removing abuse and/or neglect. These will include definitions of abuse and neglect and will clearly outline the responsibilities of all staff who suspect actual or potential abuse, including immediate action, reporting, monitoring and corrective action. You will ensure that relevant employees are able to participate in family, inter-agency or court proceedings to address specific cases of abuse and neglect. These procedures will also include reference to the Complaints Procedure.

EFFECTIVENESS

C37 Entry to Service

- C37.1 You will manage consumer entry to your service in a timely, equitable and efficient manner, to meet assessed need.

C38 Plan of Care/Service Plan

- C38.1 You will develop for each consumer a written, up to date plan of care/service plan and/or record of treatment which:
- a) is based on assessment of his/her individual needs, including cultural needs,
 - b) includes consultation with the consumer, and,
 - c) where appropriate, and with the consent of the consumer, includes consultation with the consumer's family/whanau and/or caregivers,
 - d) contains detail appropriate to the impact of the service on the consumer,
 - e) facilitates the achievement of appropriate outcomes as defined with the consumer,
 - f) includes plans for discharge/transfer,
 - g) provides for referral to and co-ordination with other medical services and links with community, iwi, Māori and other services as necessary.

C39 Service Provision

- C39.1 You will deliver to consumers services that meet their individual assessed needs, reflect current good practice, and are co-ordinated to minimise potentially harmful breaks in provision.

C40 Planning Discharge from the Service or Transfer between Services

- C40.1 You will collaborate with other services to ensure consumers access all necessary services. When a consumer is transferred or discharged from your services and accesses other appropriate services they will do so without avoidable delay or interruption. You will have written, implemented and reviewed policies and procedures for planning discharge/exit/transfer from your services. These will facilitate appropriate outcomes as defined with the consumer. The policies and procedures will include:
- a) defined employees' responsibilities for discharge planning,
 - b) incorporating discharge planning into the consumer's plan of care/service plan, where appropriate from or before admission,
 - c) full involvement of the consumer in planning discharge,
 - d) involvement of family/whanau, including advising them of discharge, as appropriate.

876

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»/«CONTRACT_VERSION»

- e) assessment and management of any risks associated with the discharge,
- f) informing the consumer on their condition, possible future course of this, any risks, emergency contacts, and how to access future treatment, care or support services,
- g) where appropriate involving the original referrer and the health professional having ongoing responsibility for the consumer in planning discharge and informing them of confirmed discharge arrangements,
- h) a process for monitoring that discharge planning does take place, which includes assessment of the effectiveness of the discharge planning programme.

C41 Where Services are Declined

C41.1 You will have written and implemented policies and procedures to manage the immediate safety of the consumer for whom entry to the service is declined and, where necessary the safety of their immediate family/whanau and the wider community. These include:

C41.2

- a) applying agreed criteria for providing services,
- b) ensuring all diagnostic steps have been taken to identify serious problems which may require your service,
- c) advising the consumer and/or their family/whanau of appropriate alternative services,
- d) where appropriate advising the family/whanau or other current services that you have declined service,
- e) recording that entry has been declined, giving reasons and other relevant information,
- f) having in place processes for providing this information to us.

C42 Death/Tangihanga

C42.1 You will have written and implemented policies and procedures to follow in the event of a death including:

- a) immediate action including first aid, calling appropriate emergency services,
- b) appropriate and culturally sensitive procedures for notification of next of kin,
- c) any necessary certification and documentation including notifying us or the Ministry of Health if required in the Service Specifications,
- d) appropriate and culturally competent arrangements, particularly to meet the special needs of Māori, are taken into account in the care of the deceased, until responsibility is accepted by the family or a duly authorised person.

C43 Health Education, Disease Prevention and Health Advice/Counselling

C43.1 You will incorporate within your services, where appropriate, an emphasis on health education, disease prevention and health advice/counselling, and support the goals of The Ministry of Health Strategy "Strengthening Public Health Action" June 1997 or subsequent publications.

FACILITIES

C44 Accessible

C44.1 You will support consumers in accessing your services by the physical design of your facilities. You will make specific provision for consumers with a mobility, sensory or communication

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

disability available and known to consumer. You will make services available to deaf people through the provision of interpreters and devices to assist communication.

C45 Facilities Maintained

C45.1 You will provide services from safe, well-designed, well-equipped, hygienic and well-maintained premises.

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D: STANDARD INFORMATION SPECIFICATION

REPORTING REQUIREMENTS

D1 Information to be Reported to The MOH

D1.1 Unless stated otherwise in the Service Schedule, information to be provided to us is to be provided at three monthly intervals in accordance with the timetable below. Where the Agreement begins or ends part way through a quarter, the report will be for that part of the quarter which falls within the term of the Agreement.

Any delays will be notified to The Monitoring Team (see below for details).

D2 Reporting Requirement Timetable

Quarters for Reporting	Due Date
1 January to 31 March	20 April
1 April to 30 June	20 July
1 July to 30 September	20 October
1 October to 31 December	20 January

D3 Forwarding Your Completed Report

You shall forward your completed Performance Monitoring Returns to:

The Monitoring Team
 HealthPAC – Dunedin
 Private Bag 1042
 Dunedin
 Ph: 03-474 8040
 Fax: 03-474 8582
 Email healthpac_m@moh.govt.nz

Handwritten initials: bmr

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» «CONTRACT_VERSION»

PART 3: SERVICE SCHEDULES

3.01 INTRODUCTION

- 3.01.1 This Part 3 contains each of the Service Schedules listed in the Head Agreement (Agreement Summary).
- 3.01.2 Each of the Service Schedules in Part 3 form part of the Agreement between us as defined in the Head Agreement or in a subsequent Variation to the Head Agreement, as applicable.
- 3.01.3 Each Service Schedule contains the Service Specifications and Provider Specific Terms and Conditions associated with the Service.
- 3.01.4 The Service Specification describes the service, and set up quality and information reporting requirements additional to those specified in Part 2 (the General Terms). Note that nationally standard service descriptions may contain details (particularly Purchase Units and Reporting Requirements) which do not apply to all contracts.
- 3.01.5 The Provider Specific Terms and Conditions detail those elements of the Agreement that are unique to you. This will include payment terms, the form of the Service Schedule, and any details which differ from Part 2 (the General Terms) and/or standard Service Specification/s (including detailed clarification of any parts of the nationally standard service description which do not apply to your contract, and a full list of relevant purchase units, volumes, prices and reporting requirements).

CONTENTS OF EACH SERVICE SCHEDULE WITHIN PART 3

3.02 Service Specifications

- 3.02.1 Standard national specifications (note this may not be physically contained in the contract but will be made available for Providers in electronic and hardcopy editions for distribution within their organisations).
 - a) Additional specifications (if appropriate).
- 3.02.2 Provider Specific Terms and Conditions
 - a) Introduction
 - b) Details of all Volumes and Prices which apply to this Service Schedule
 - c) Reporting Requirements
 - d) Payment Details
 - e) Detail of Changes to standard documents
 - i. Summary of changes to the General Terms (if any)
 - ii. Summary of additional service specifications (if any)
 - iii. Summary of changes from standard service specification (if any)

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«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

E: PROVIDER SPECIFIC TERMS AND CONDITIONS

INTRODUCTION

E1 Service Details

E1.1 It is agreed that the following details apply to this Service Schedule.

Legal Entity Name	«PROVIDER_NAME»
Legal Entity Number	«PROVIDER_NUMBER»
Contract Number	«CONTRACT_CONTRACTID» / «CONTRACT_VERSION»
Contract Commencement Date	«CONTRACT_STARTDATE»
Contract End Date	«CONTRACT_ENDDATE»

E2 Standard Documentation

E2.1 It is agreed that the Service Schedule includes the standard documentation in Part 2 (the General Terms), and the standard service specifications included in this Service Schedule, as amended by any changes (if any) identified below.

E2.2 It is agreed that the services will be paid for in accordance with the details given in the Payment Details below.

E3 Details of all Purchase Units which apply to this Service Schedule

#TABLE3#

#TABLE3REFORMATTED#

PAYMENT DETAILS

E4 Price

E4.1 The price we will pay for the Service you provide is specified above. Note that all prices are exclusive of GST.

E5 Invoicing

E5.1 We will pay you on the dates set out in the Payment Schedule below for the services you provide in each invoice period so long as we receive a valid GST tax invoice from you. The invoice must meet all legal requirements and must contain the following information:

- a. provider name (legal entity name)
- b. provider number (legal entity number)

Handwritten signature/initials

«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID»«CONTRACT_VERSION»

- c. provider invoice number
- d. contract number
- e. purchase unit number or a description of the service being provided
- f. date the invoice is due to be paid/date payment expected
- g. dollar amount to be paid
- h. period the service was provided
- i. volume, if applicable
- j. GST rate
- k. GST number

E5.2 If we do not receive an invoice from you by the date specified in the payment schedule below, then we will pay you within 20 days after we receive the invoice.

E6 Payment Schedule
#PAYMENTSSCHEDULE#

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«PROVIDER_NAME»
«PROVIDER_NUMBER» / «CONTRACT_CONTRACTID» / «CONTRACT_VERSION»

F: SERVICE SPECIFICATION

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PART 4

Dispute Resolution Process

- 1.1 If Ahuriri District Health and the DHB do not agree on the business plan, or on the terms of the DHB contract or contracts under clause 59.3, they must, as soon as practicable and in any event immediately after the expiry of the time for agreeing on the plan or the contract or contracts under that clause, call a joint meeting of the boards of Ahuriri District Health and the DHB to resolve the dispute, with such meeting to take place within 20 business days of the meeting being called.
- 1.2 If the dispute is not settled by agreement at the meeting between the boards of Ahuriri District Health and the DHB or within 20 business days of that meeting, then, unless both Ahuriri District Health and the DHB agree otherwise in writing:
- 1.2.1 each must promptly provide the other with full written particulars of the dispute;
- 1.2.2 the dispute will be referred to mediation. Mediation must in all respects be conducted in terms of the LEADR New Zealand Incorporated standard mediation agreement. The mediation must be conducted by a mediator and at a fee agreed by Ahuriri District Health and the DHB. Failing agreement between Ahuriri District Health and the DHB, the mediator shall be selected, and the mediator's fee shall be determined, by the Chair for the time being of LEADR New Zealand Incorporated; and
- 1.2.3 failing successful mediation, the dispute must promptly be submitted to arbitration by Ahuriri District Health and the DHB. Alternatively, either of them may request such arbitration at a convenient location. If an arbitrator is not agreed and appointed within 10 business days after the mediation has failed, Ahuriri District Health and the DHB must request that the Arbitrators' and Mediators' Institute of New Zealand appoint the arbitrator as soon as possible. Failing a joint request, either of them may make the request. Arbitration must be subject to and in accordance with the provisions of the Arbitration Act 1996.
- 1.3 Neither of Ahuriri District Health or the DHB will initiate any litigation during the dispute resolution process outlined in paragraphs 1.1 or 1.2, unless proceedings are necessary for preserving its rights.
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PART 5

Memorandum of Commitment



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MEMORANDUM OF COMMITMENT

Memorandum of Commitment

Between

the Ahuriri District Health and the Hawke's Bay District Health Board

September 2008

Parties

Ahuriri District Health

Ahuriri District Health was incorporated as a trust board on 1 October 2008 under the Charitable Trusts Act 1957 to relieve poverty and benefit the Ahuriri community through the improvement and promotion of health of Ahuriri Maori and the wider community within the rohe of Ahuriri, and to facilitate the advancement of education and training in health services for health service providers, Ahuriri Maori and the wider community within the rohe of Ahuriri.

The Hawke's Bay District Health Board

The Hawke's Bay District Health Board (the DHB) is established and constituted under the New Zealand Public Health and Disability Act 2000 to provide services, policies, programmes and funding in furtherance of the objectives and functions set out in sections 22 and 23 of the Act. References to the DHB include any successor organisation established to replace the DHB.

Purpose

The purpose of this memorandum is to

- Outline the key principles to create and underpin an ongoing relationship between the DHB and the Ahuriri District Health; and
- Identify a range of practical ways in which the parties will engage so as to enable a solid and substantive working relationship to be established; and
- Provide a foundation to enable Ahuriri Maori to participate in, and contribute to, Ahuriri Maori health development through:
 - Development of appropriate strategies to improve the health of Ahuriri Maori; and
- The enhancement and monitoring of service delivery to Ahuriri Maori.

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Acknowledgements of Parties

The parties acknowledge:

- that te Tiriti o Waitangi/the Treaty of Waitangi is a founding document of Aotearoa/New Zealand and lays an important foundation for the relationships between the Crown and Māori;
- that the creation of the Ahuriri District Health as the result of a Treaty settlement provides opportunities for real improvements in Maori health status within Ahuriri;
- that the role of the DHB as defined by statute benefits from the input of its relevant stakeholders, in this case Ahuriri Māori;
- that the relationship created by this memorandum is not an exclusive one and that both parties reserve the right to create or maintain relationships with any other group that may assist them in the furtherance of their respective objectives;
- that this memorandum does not alter or diminish the DHB's statutory powers and obligations under the New Zealand Public Health and Disability Act 2000 or any other statute in any way; and
- that the relationship developed in this memorandum may also lead to the development of contracts for the provision of relevant services but that this memorandum is not developed in this expectation. Any such contracts that may be developed will form separate legal documents.

Agreement of Parties

The parties agree that they will:

- work together in collaboration to improve health outcomes for Ahuriri Maori;
- work together to identify long term sustainable options to enable the Ahuriri District Health to continue to function beyond the establishment period, including:
 - investigating ongoing resourcing to give effect to this memorandum; and
 - investigating the issues surrounding whether the Ahuriri District Health realistically can become a primary health organisation.
- share information as it relates to the subject-matter of this memorandum in an open and transparent way;
- mutually support the endeavours of the other; and
- act at all times in good faith, fairly, reasonably and honourably towards the other.

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Ahuriri District Health further agrees that it will:

- assist the DHB to identify opportunities to improve services to and the health status of Ahuriri Māori; and
- assist the DHB to identify problems with current services, policies and programmes impacting on the health status of Ahuriri Māori; and
- provide the DHB with advice on developing appropriate strategies to improve the health status of Ahuriri Māori.

The DHB further agrees that it will:

- take account of any information and advice provided by Ahuriri District Health;
- provide Ahuriri District Health with opportunities to contribute to the DHB's decision-making processes, where the decisions are relevant to the subject matter of this memorandum; and
- keep Ahuriri District Health informed about relevant policies and programmes (including information about Māori health issues generally and information regarding Ahuriri Māori in particular), and the outcome of any decision-making process;
- commit to considering any option identified in paragraph 5.2, according to its processes.

Process for Working Together

The relationship will be given effect to by a programme of regular consultation, information sharing and ongoing monitoring of the relationship.

The parties will work together under a collaborative model that will involve:

- participation by Ahuriri District Health in the DHB Māori Relationship Board;
- regular meetings between the DHB Board and the Ahuriri District Health; and
- regular meetings between the DHB staff and the Ahuriri District Health; and
- ongoing engagement between the DHB and the Ahuriri District Health in order to support the Trust in its provision of advocacy, consultation and research services.

The collaboration outlined in paragraph 9 will be given effect by

The Ahuriri District Health will nominate, in consultation with the DHB, a representative for membership of the DHB Māori Relationship Board which reports to the Board and is responsible for monitoring and providing recommendations to improve the health of Māori in Hawke's Bay.

The Ahuriri District Health and the DHB Board will meet no less than at three month intervals for the purpose of discussing issues relevant to the health status of Ahuriri

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Maori, including the inclusion and participation of Ahuriri Māori in the strategic development of services, and discussing any ongoing relationship matters between the parties. The frequency of these meetings will be reviewed by the DHB and Ahuriri District Health after a year has passed since the commencement of this memorandum.

The Ahuriri District Health and DHB staff shall form a working party with agreed Terms of Reference, including a regular and ongoing meeting programme to address the matters set out in this memorandum.

Disputes

In the event that any dispute arises between the parties on any issue relating to their obligations under this memorandum, the parties shall meet within four weeks of either party notifying that a dispute exists and requesting a meeting to address the issues raised.

Following the initial meeting the parties will meet as required and use their best endeavours to resolve the dispute.

If the dispute is unable to be resolved within 2 months, either party may call a meeting of the Ahuriri District Health and the DHB Board to resolve the issue, with such meeting to take place within 4 weeks of the request for the meeting being made.

Disclosure of Information

Any information exchanged under this memorandum remains the property of the originating party and will be kept confidential to the parties. Such information will only be disclosed with the prior approval of the relevant party and/or according to law.

The parties specifically acknowledge that information relating to, or produced by, the relationship may be required to be released under the Official Information Act 1982.

Execution of Memorandum

This memorandum comes into effect on [day/month] 2008.

Review of Memorandum

This memorandum will be reviewed one year from its coming into effect and then every 3 years.

Termination of Memorandum

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This memorandum may be terminated by either party upon 2 years notice unless agreed otherwise, or varied by mutual agreement at any time.

In the event that notice has been given by either party to terminate the agreement, both parties will commit to using their best endeavours to negotiating a replacement agreement during the notice period.

Execution

Signed this ___ day of _____ 2008

Signed this ___ day of _____ 2008

By

by

[Authorised signatories]

[Authorised signatories]

Before witnesses:

Before witnesses:

Name of Witness 1

Name of Witness 1

Name of Witness 2

Name of Witness 2

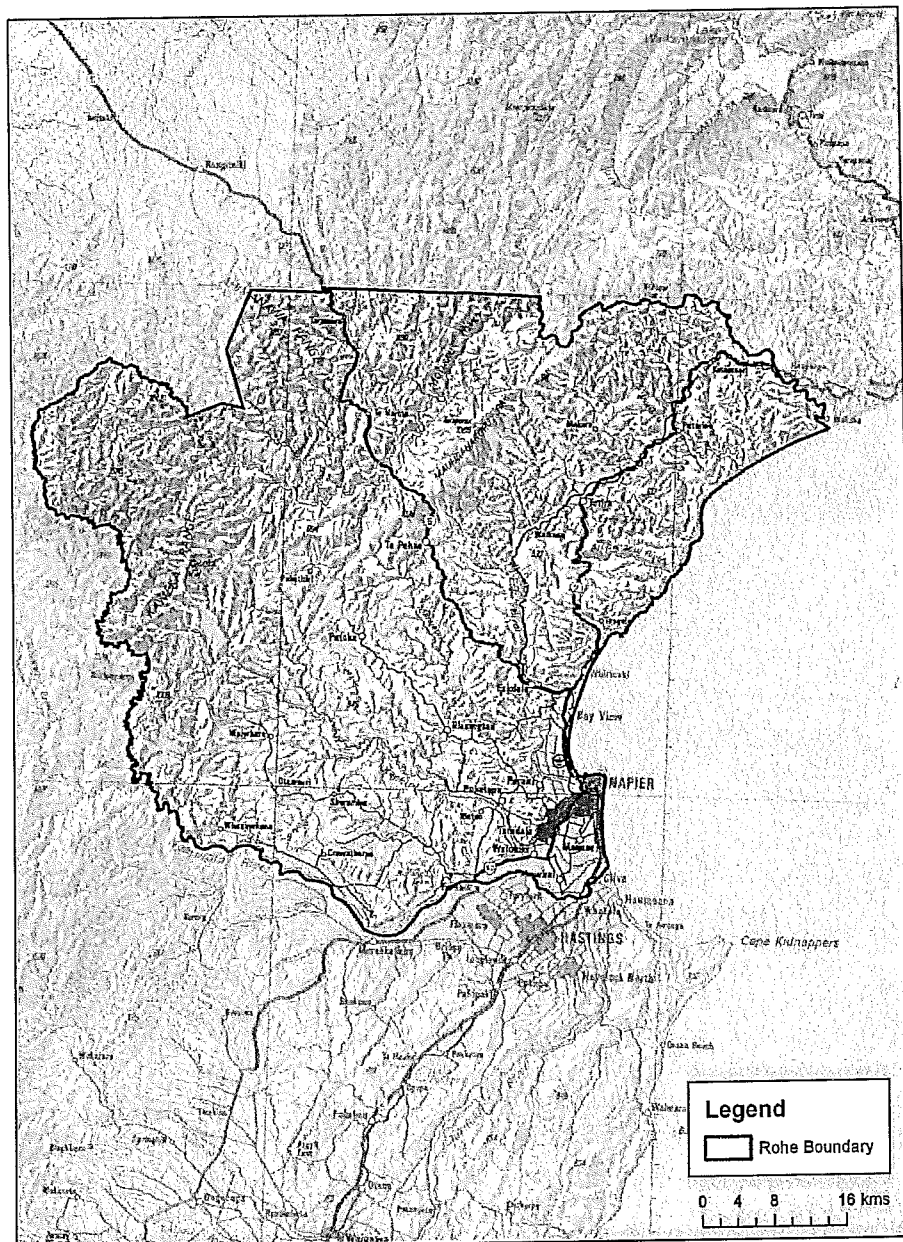
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PART 6

Map of Rohe of Ahuriri



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Rohe of Ahuriri

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APPENDIX

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WAI 692

THIRD AMENDED STATEMENT OF CLAIM

Dated 22 July 1999.

IN THE WAITANGI TRIBUNAL
WELLINGTON

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF a claim to the Waitangi Tribunal by
Hana Loyla Cotter, Pirika Tom Hemopo and
Takuta Hohepa Mei Emery on behalf of themselves,
Te Taiwhenua o te Whanganui a Orotu and the
peoples within the Ngati Kahungunu tribal rohe of
Ahuriri

The claimants say:

1. This claim is lodged by Hana Loyla Cotter (Ngati Kahungunu), Te Kahu Korowai o Te Kohanga Reo of Napier, Pirika Tom Hemopo (Rongomaiwahine/Kahungunu/Waikato/Maniapoto), probation officer of Napier and Takuta Hohepa Mei Emery (Ngati Maniapoto/Kahungunu/Rangitane/Te Arawa, (school teacher of Ahuriri.
2. The claimants claim for themselves and Te Taiwhenua of Te Whanganui a Orotu and the peoples within the Ngati Kahungunu tribal rohe of Ahuriri who claim to be prejudicially affected by, inter alia, practices, policies, actions and omissions by and on behalf of the Crown that are likely to be inconsistent with the principles of the Treaty of Waitangi.

The claim

3. The claimants say that they and their tupuna have been, are, or are likely to be prejudicially affected by the ordinances, acts, regulations, proclamations, notices and other statutory instruments and the policies, practices, acts or omissions of the Crown which were and are inconsistent with the principles of the Treaty of Waitangi as further set out in this third amended statement of claim.

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First cause of action-historical breaches

4. Pursuant to the terms and principles of the Treaty of Waitangi, from 1840 the Crown was and remains under an obligation to provide for the health and well-being of Maori, including:
 - 4.1 Consulting with Maori on substantive matters effecting Maori health (Article 1).
 - 4.2 Ensuring that Maori are given control of adequate and appropriate health resources within their communities (Article 2).
 - 4.3 Ensuring that Maori are in receipt of the same standards of health care and health outcomes as other citizens of New Zealand (Article 3).
5. In addition to the obligations set out in paragraph 4 hereto, the Crown was under a further obligation to the Maori of Ahuriri, including the claimants and their tupuna ("Ahuriri Maori"), in accordance with the terms of the Ahuriri Block transaction as pleaded in paragraph 16 and 17 of the amended statement of claim filed in the Wai 400 claim in respect of Ahuriri lands (which paragraphs are relied on in this claim as if pleaded in full), namely to provide health and hospital services to the Maori of Ahuriri.
6. In breach of the duties and obligations set out in paragraphs 4 and 5 hereto, the Crown retained the land subject to the 1851 Ahuriri transaction and:
 - 6.1 Failed to consult with or otherwise adequately ascertain Maori health needs at Ahuriri including failing to provide for adequate Maori representation and participation in health agencies in Ahuriri including the Hawke's Bay Hospital Board, and
 - 6.2 Failed to give any control over the delivery or administration of health services and resources to Maori, and
 - 6.3 Failed to fulfil its promise to establish appropriate health services, including hospitals and resources so as to ensure Ahuriri Maori enjoy the same standards of health care as non Maori.
7. As a result of the breaches set out in paragraph 6 hereto Ahuriri Maori have consistently experienced significantly inferior health and hospital services than non Maori or health and hospital services that were otherwise inappropriate and that the result of such inferior or

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inappropriate health care has resulted in substantially worse health outcomes for Ahuriri Maori.

Second cause of action-contemporary Treaty breaches

8. Since 1988 the Crown has reorganised the provision of public health and hospital services through the creation of a number of entities variously described as Area Health Boards, Commissioners, Ministry of Health, Public Health Commission, Regional Health Authorities, Health Funding Authority, CHE Board Designate, Crown Health Enterprises, Health and Hospital Services, and (to the extent that it is involved in the provision of or monitoring of health services) the Crown Company Monitory Advisory Unit ("Crown health entities").
9. The Crown health entities are Crown entities pursuant to the Fourth Schedule of the Public Finance Act 1989 and are accordingly subject to the Treaty duties set out in paragraph 4 hereto and the duties to Ahuriri Maori set out in paragraph 5 hereto.
10. Pursuant to the obligations under the Treaty set out in paragraphs 4 and 5 hereto, the Crown through the Crown health entities has adopted policies and contracts for the delivery of health services to Maori and to meet Maori health needs ("Maori health policies").

Particulars

Whaia te ora mo te iwi

Policy Guidelines for Maori Health

He Taura Tieke

Maori Health Services Business Plans Healthcare Hawke's Bay

The Government's Medium Term Strategy for Health and Disability Support Services

Statements of Intent

Statement of Owners expectations of Hospital Health Services

He Matariki

Central Regional Health Authority Purchasing Directions

Central Regional Health Authority Purchasing Intentions

Regional Health Authority/Health Funding Authority Funding Agreements including standards/clauses for Crown Health Authority/Health and Hospital Service Contracts

Te Kite Aronga

Tauira Whakahaere

Health Funding Authority Maori Health Policy

National Strategic Plans for Maori Health

Further relevant Policies as may be identified.

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11. The effect of the obligations under the Treaty and the Maori health policies set out in paragraphs 9 and 10 hereto is to impose obligations on the Crown and the Crown health entities to:
 - 11.1 Ensure that the obligations under the Treaty and Maori health policies are monitored and enforced.
 - 11.2 Consult with Maori over issues which affect or are likely to affect Maori health or Maori health outcomes.
 - 11.3 Ensure that the delivery of health services and health outcomes for Maori are effectively monitored.
 - 11.4 Establish and address Maori health needs.
 - 11.5 Deliver a reasonable standard of health to Maori.
 - 11.6 Continue to improve the delivery of health services to Maori.
 - 11.7 Continue to improve health outcomes for Maori.
 - 11.8 Ensure that health services and outcomes for Maori are delivered in a manner which is culturally sensitive or appropriate.
12. In breach of the obligations under the Treaty and the Maori health policies the Crown and Crown health entities (including individual entities) have failed to give effect to the principles of the Treaty and Maori health policies including failing to deliver health services to Maori in Ahuriri and Hawke's Bay in a manner consistent with tikanga Maori.

Particulars

- 12.1 Since the reforms began Maori health measured by mortality and morbidity has become worse in absolute terms and relative to non Maori.
- 12.2 The Crown and/or the Crown health entities failed to consult or adequately consult with Ahuriri Maori over the decision in 1995 to regionalise Hawke's Bay hospital services in Hastings.
- 12.3 The Crown and/or the Crown health entities failed to consult or adequately consult with Ahuriri Maori over the decision in 1997 to close Napier Hospital.
- 12.4 The Crown and/or the Crown health entities failed to consult or adequately consult with Ahuriri Maori over the decision to build the new health clinic and the types of health services to be provided at the clinic.

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- 12.5 The Crown and/or the Crown health entities failed to consult or adequately consult with Ahuriri Maori over the site for the new health clinic in Road, Napier.
- 12.6 The Crown has failed to ensure adequate representation of Maori in the relevant Crown health entities to ensure that Maori have an effective say in the decision making structure affecting their health and well being.
- 12.7 The Crown by itself and through the Crown health entities has continued to fail to give effect to its obligations under the 1851 Ahuriri transaction including providing effective health services and facilities for Ahuriri Maori from the site at Mataruahau.
- 12.8 The health clinic under construction in Napier is inadequate and inappropriate to meet Maori health needs at Ahuriri and the obligations of the Crown under the 1851 Ahuriri transaction.
- 12.9 Healthcare Hawke's Bay and its predecessors have not considered the health care and health status of Maori as a significant issue in their service delivery planning.
- 12.10 Healthcare Hawke's Bay and the Health Funding Authority and their predecessors have not offered Maori in Ahuriri or Hawke's Bay an opportunity through effective consultation, participation, and representation to effectively join in the decision making processes effecting their health and health care.
- 12.11 The Crown and Crown health entities have failed to provide for appropriate Maori structures for the provision of health and hospital services for Maori in Ahuriri and Hawke's Bay.
- 12.12 The Crown and Crown health entities have failed to provide for Maori health as a health gain priority in their health service planning and delivery.
- 12.13 The Crown and the Crown health entities including the Crown Company Monitoring Advisory Unit and Healthcare Hawke's Bay have not analysed or analysed adequately changes in Maori health in Ahuriri or Hawke's Bay.
- 12.14 The Crown and Crown health entities have failed to involve Maori in the monitoring or development of monitoring systems for the provision of Health Services and health outcomes for Maori provided by the Crown health entities.
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- 12.15 The Crown and Crown health entities have consistently failed to consult with Maori over changes in health delivery and outcomes in Ahuriri and Hawke's Bay.
- 12.16 The Crown and Crown health entities have failed to assist or assist adequately Ahuriri Maori to develop their own capacities to provide health care.
- 12.17 The Crown and the Crown health entities have been inconsistent in their statements and behaviour as to the closure of Napier Hospital, to the detriment of Maori in Ahuriri and Hawke's Bay.
- 12.18 Since the beginning of the health restructuring process there has been a consistent gap between political statements, Maori health policy, and the practice of Crown health entities, including Healthcare Hawke's Bay, CCMAU, and the Health Funding Authority (or their predecessors) to the detriment of Maori in Ahuriri and Hawke's Bay.
- 12.19 The Crown though the Ministry of Health has not taken adequate account of the effects of socio-economic status in setting access targets for the health services, based on transport assumptions, particularly the ownership of or access to a private vehicle.
- 12.20 The creation of a separation of funder and provider roles (Health Funding Authority/Health and Hospital Service or Regional Health Authority/ Crown Health Enterprise) bought about through the health restructuring has not worked to the benefit of Maori and Ahuriri or Hawke's Bay.
- 12.21 The Crown has omitted to incorporate adequate Treaty protection mechanisms within the legislative framework for health restructuring.
- 12.22 As a result of the breaches set out in paragraph 12 hereto Ahuriri Maori continue to receive inferior health and hospital services and/or health and hospital services which are otherwise inappropriate or detrimental to the ongoing health of Ahuriri Maori.

Relief sought

- (a) A finding that the Crown has breached the principles of the Treaty of Waitangi and the terms of the Ahuriri transaction of 1851 and in its provision of health services to Ahuriri Maori since 1851.

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- (b) A finding that the Crown and the Crown health agencies have breached the principles of the Treaty of Waitangi and Maori health policy in deciding to regionalise Hawke's Bay hospital services at Hastings without first consulting or adequately consulting with Maori.
 - (c) A finding that the Crown and Crown health entities have breached the Treaty and Maori health policy in deciding to close Napier Hospital without consulting or adequately consulting Maori.
 - (d) A finding that Mataruahau (Napier Hill hospital site) is of importance to Maori health.
 - (e) A recommendation that an independent specialist body consisting of Maori and Health specialists including the named claimants in this claim be set up to undertake a comprehensive inquiry on terms of reference set by the Tribunal into Maori health needs in the Hawke's Bay and Ahuriri in particular, including health and cultural needs and including an investigation as to whether an appropriately funded facility for Maori health on the Napier Hospital site is appropriate. Further details of the relief sought under this head will be provided in due course.
 - (f) A recommendation that the findings of the specialist body be acted upon.
 - (g) A recommendation that the Ahuriri Maori be adequately and appropriately funded to carry out research and make submissions to the body set out in paragraph (e) hereto.
 - (h) A recommendation that the Mataruahau site be retained for Maori health purposes and the current facilities maintained in good condition and properly secured until the review set out in paragraph (e) above is completed.
 - (i) A recommendation that the Crown amend the Health and Disability Services Act 1993 to include a section requiring the Crown and Crown health entities to give effect to the principles of the Treaty of Waitangi.
 - (j) A recommendation that the Crown and Crown health entities introduce a specific monitoring program to ensure compliance with the principles of the Treaty of Waitangi and Maori health policy consistent with the Treaty of Waitangi.
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(k) A recommendation that pending the report of the specialist body set out in paragraph (e) hereto that the Crown and Crown health entities implement an effective partnership with Maori for the creation of appropriate policies and the provisions of health services in Ahuriri and Hawke's Bay. Further details of the relief sought under this head will be provided in due course.

(l) A recommendation that the Crown and Crown health entities involved in provision of health services to Maori consult with Maori and relevant Maori organisations including relevant hapu and iwi organisations affected before taking any decision which will effect the provision of such services.

(m) The costs of this claim.

Trace Anderson
Ministry of Health
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